

# **COLORADO REVISED STATUTES**



**TITLES 10-11**

**2012**



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# Colorado Revised Statutes 2012

Titles 10-11  
Insurance  
Financial Institutions



Edited, Collated, Revised,  
Annotated, and Indexed  
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

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*Reenacted by the General Assembly as the  
Positive Statutory Law of Colorado of a General and Permanent Nature  
and as the Official Statutes of the State of Colorado*

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**CONTENT OF 2012  
COLORADO REVISED STATUTES**

**Declaration of Independence  
Constitution of the United States  
Enabling Act of Colorado  
Constitution of the State of Colorado**

<b>Title 1.</b>	Elections	<b>Title 25.</b>	Health
<b>Title 2.</b>	Legislative	<b>Title 25.5.</b>	Health Care Policy and Financing
<b>Title 3.</b>	United States	<b>Title 26.</b>	Human Services Code
<b>Title 4.</b>	Uniform Commercial Code	<b>Title 27.</b>	Behavioral Health
<b>Title 5.</b>	Consumer Credit Code	<b>Title 28.</b>	Military and Veterans
<b>Title 6.</b>	Consumer and Commercial Affairs	<b>Title 29.</b>	Government — Local
<b>Title 7.</b>	Corporations and Associations	<b>Title 30.</b>	Government — County
<b>Title 8.</b>	Labor and Industry	<b>Title 31.</b>	Government — Municipal
<b>Title 9.</b>	Safety — Industrial and Commercial	<b>Title 32.</b>	Special Districts
<b>Title 10.</b>	Insurance	<b>Title 33.</b>	Parks and Wildlife
<b>Title 11.</b>	Financial Institutions	<b>Title 34.</b>	Mineral Resources
<b>Title 12.</b>	Professions and Occupations	<b>Title 35.</b>	Agriculture
<b>Title 13.</b>	Courts and Court Procedure	<b>Title 36.</b>	Natural Resources — General
<b>Title 14.</b>	Domestic Matters	<b>Title 37.</b>	Water and Irrigation
<b>Title 15.</b>	Probate, Trusts, and Fiduciaries	<b>Title 38.</b>	Property — Real and Personal
<b>Title 16.</b>	Criminal Proceedings	<b>Title 39.</b>	Taxation
<b>Title 17.</b>	Corrections	<b>Title 40.</b>	Utilities
<b>Title 18.</b>	Criminal Code	<b>Title 41.</b>	Aeronautics: Aircraft and Airports
<b>Title 19.</b>	Children's Code	<b>Title 42.</b>	Vehicles and Traffic
<b>Title 20.</b>	District Attorneys	<b>Title 43.</b>	Transportation
<b>Title 21.</b>	State Public Defender		
<b>Title 22.</b>	Education		<b>Colorado Court Rules</b>
<b>Title 23.</b>	Postsecondary Education		<b>A—Z Index — Comparative Tables</b>
<b>Title 24.</b>	Government — State		

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The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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## TABLE OF CONTENTS

Source note explanation .....	vi
Colorado statutory research .....	vii
Bills without safety clauses - explanation of effective dates .....	ix
Annotation explanation .....	ix
Title 10 Insurance .....	Title 10 - page 1
Title 11 Financial Institutions .....	Title 11 - page 1



## Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

## **Colorado Statutory Research**

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

**Comparative Tables:**

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

**Supplements to C.R.S. 1963 include:**

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.



**Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes**

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Titles 10 & 11	1975-86 Supplements	<b>1987 Replacement Volumes</b> 1988-93 Supplements Vol. 4A & 4B - Titles 10 & 11 1988-93 Supplements <b>1994 Replacement Volumes</b> 1995-96 Supplements Vol. 4A & 4B - Titles 10 & 11 1995-96 Supplements

**Starting in 1997**, annual softbound volumes are published each year.

For additional information on researching legislative history, see [www.leg.state.co.us](http://www.leg.state.co.us), Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause  
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor’s proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

**Annotations**

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.



# **TITLE 10**

## **INSURANCE**

TYPE 10  
HARVEST

# TITLE 10

## INSURANCE

**Cross references:** For insurance under the “Uniform Consumer Credit Code - Insurance”, see article 4 of title 5; for liability insurance for state and county employees, see article 14 of title 24; for requirements for companies writing compensation insurance, see article 44 of title 8; for professional liability insurance for professional service corporations for the practice of law, see C.R.C.P. 265.

**Law reviews:** For article, “Declaratory Judgment Actions to Resolve Insurance Coverage Questions”, see 18 Colo. Law. 2299 (1989); for discussion of Tenth Circuit decisions dealing with insurance law, see 66 Den. U. L. Rev. 775 (1989); for discussion of Tenth Circuit decisions dealing with insurance law, see 67 Den. U. L. Rev. 747 (1990).

### GENERAL PROVISIONS

Art. 1. General Provisions, 10-1-101 to 10-1-218.

### LICENSES

Art. 2. Licenses, 10-2-101 to 10-2-1101.

### REGULATION OF INSURANCE COMPANIES

Art. 3. Regulation of Insurance Companies, 10-3-101 to 10-3-1403.

### CERTIFIED CAPITAL COMPANIES

Art. 3.5. Certified Capital Companies, 10-3.5-101 to 10-3.5-110.

### PROPERTY AND CASUALTY INSURANCE

Art. 4. Property and Casualty Insurance, 10-4-101 to 10-4-1507.

### NONADMITTED INSURANCE

Art. 5. Nonadmitted Insurance, 10-5-101 to 10-5-119.

### CAPTIVE INSURANCE COMPANIES

Art. 6. Captive Insurance Companies, 10-6-101 to 10-6-130.

### LIFE INSURANCE

Art. 7. Life Insurance, 10-7-101 to 10-7-710.

### COVERCOLORADO

Art. 8. CoverColorado, 10-8-101 to 10-8-607.

### FRANCHISE INSURANCE

Art. 9. Franchise Insurance (Repealed).

### CREDIT INSURANCE

Art. 10. Credit Insurance, 10-10-101 to 10-10-119.

### TITLE INSURANCE

Art. 11. Title Insurance Code of Colorado, 10-11-101 to 10-11-126.

**MUTUAL INSURANCE**

- Art. 12. Mutual Insurance, 10-12-101 to 10-12-411.

**INTERINSURANCE**

- Art. 13. Interinsurance, 10-13-101 to 10-13-114.

**FRATERNAL BENEFIT SOCIETIES**

- Art. 14. Fraternal Benefit Societies, 10-14-101 to 10-14-705.

**PRENEED FUNERAL CONTRACTS**

- Art. 15. Preneed Funeral Contracts, 10-15-101 to 10-15-121.

**HEALTH CARE COVERAGE**

- Art. 16. Health Care Coverage, 10-16-101 to 10-16-1015.  
 Art. 16.5. Prepaid Dental Care Plans (Repealed).

**HEALTH MAINTENANCE ORGANIZATIONS**

- Art. 17. Health Maintenance Organizations (Repealed).

**MEDICARE SUPPLEMENT INSURANCE**

- Art. 18. Medicare Supplement Insurance, 10-18-101 to 10-18-109.

**LONG-TERM CARE**

- Art. 19. Long-term Care Insurance, 10-19-101 to 10-19-115.

**LIFE AND HEALTH INSURANCE PROTECTION**

- Art. 20. Life and Health Insurance Protection Association, 10-20-101 to 10-20-120.

**HEALTH CARE**

- Art. 21. The Colorado Care Health Insurance Program (Repealed).  
 Art. 22. Colorado Health Benefit Exchange, 10-22-101 to 10-22-108.

**CASH BONDING AGENTS**

- Art. 23. Cash Bonding Agents, 10-23-101 to 10-23-110.

**GENERAL PROVISIONS****ARTICLE 1****General Provisions**

**Editor's note:** This article was repealed in 2002 and was subsequently recreated and reenacted in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**PART 1****GENERAL PROVISIONS**

- |           |                          |   |
|-----------|--------------------------|---|
|           | 10-1-102.                | Definitions.  |
|           | 10-1-103.                | Division of insurance - subject to termination - repeal of functions. |
| 10-1-101. | Legislative declaration. | 10-1-104. Commissioner of insurance -                                 |



	other employees.		insurance fraud - legislative declaration.
10-1-105.	Actuary.		
10-1-106.	Oath required of insurance commissioner and actuary.	10-1-129.	Fraudulent insurance acts - enforcement.
10-1-107.	Personal fees prohibited.	10-1-130.	Availability of sickness, health, and accident insurance.
10-1-108.	Duties of commissioner - reports - publications - fees - disposition of funds - adoption of rules - examinations and investigations.	10-1-131.	Duties to third parties - rules.
		10-1-132.	Oversight of the general assembly.
10-1-109.	Rules of commissioner.	10-1-133.	Consumer insurance council - creation - advisory body - appointment of members - meetings - consumers' choice award - repeal.
10-1-110.	Grounds and procedure for suspension or revocation of certificate or license of entities.	10-1-134.	Office of insurance ombudsman - plan - report to joint budget committee.
10-1-111.	Invoking aid of courts.	10-1-135.	Reimbursement for benefits - limitations - notice - definitions - legislative declaration.
10-1-112.	Policy conditions required by other states.		
10-1-113.	No seal required on policies.		
10-1-114.	Sale of premium notes prohibited.		
10-1-115.	Penalty.		
10-1-116.	Defamation of other companies.		
10-1-117.	Company unauthorized in other states.		
10-1-118.	Foreign companies - unsatisfied judgments - suspension.	10-1-201.	Legislative declaration.
10-1-119.	Insurance vending machines prohibited.	10-1-202.	Definitions.
10-1-120.	Reporting of medical malpractice claims.	10-1-203.	Authority, scope, and scheduling of examinations.
10-1-121.	Reporting of malpractice claims against physical therapists.	10-1-204.	Conduct of examinations.
10-1-122.	Reporting of malpractice claims against architects.	10-1-205.	Financial examination reports.
10-1-123.	Reporting of claims against plumbers.	10-1-206.	Conflict of interest.
10-1-124.	Reporting of podiatric malpractice claims.	10-1-207.	Immunity from liability - prohibited activity.
10-1-125.	Reporting of malpractice claims against optometrists.	10-1-208.	Informal investigations.
10-1-126.	Training program for persons working with the aging.	10-1-209.	Short title.
10-1-127.	Discretionary use of administrative law judges.	10-1-210.	Market analysis procedures.
10-1-128.	Fraudulent insurance acts - immunity for furnishing information relating to suspected	10-1-211.	Protocols for market conduct actions.
		10-1-212.	Targeted, on-site market conduct examinations - rules.
		10-1-213.	Confidentiality requirements.
		10-1-214.	Market conduct surveillance personnel.
		10-1-215.	Fines and penalties.
		10-1-216.	Participation in national market conduct databases.
		10-1-217.	Coordination with other states through NAIC.
		10-1-218.	Additional duties of commissioner.

## PART 2

## EXAMINATIONS

## PART 1

## GENERAL PROVISIONS

**10-1-101. Legislative declaration.** The general assembly finds and declares that the purpose of this title is to promote the public welfare by regulating insurance to the end that insurance rates shall not be excessive, inadequate, or unfairly discriminatory, to give consumers thereof the greatest choice of policies at the most reasonable cost possible, to permit and encourage open competition between insurers on a sound financial basis, and to avoid regulation of insurance rates except under circumstances specifically authorized under the provisions of this title. Such policy requires that all persons having to do with

insurance services to the public be at all times actuated by good faith in everything pertaining thereto, abstain from deceptive or misleading practices, and keep, observe, and practice the principles of law and equity in all matters pertaining to such business.

**Source:** L. 2003: Entire article RC&RE, p. 587, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-101 as it existed prior to 2002.

### ANNOTATION

**Annotator's note.** Since § 10-1-101 is similar to § 10-1-101 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision have been included in the annotations to this section.

**Insurance commissioner's authority is broad** and necessarily includes the authority to determine whether an insurance company has acted in bad faith. *Hartford Fire Ins. Co. v. Colo. Div. of Ins.*, 824 P.2d 76 (Colo. App. 1991).

**Concept of insurance bad faith claim applies outside only the cancellation or claims settings.** The nature of the relationship created by the insurance contract, rather than the activity involved, determines whether the duty of good faith and fair dealing exists. The duty, as formulated by the general assembly in this section, is a broad and wide-ranging one. *Ballow v. PHICO Ins. Co.*, 875 P.2d 1354 (Colo. 1993).

**A third-party administrator owes a duty of good faith to an insured when a special relationship exists between the third-party administrator and the insured.** A special relationship is created when the administrator has

primary control over benefit determinations; assumes some of the insurance risk of loss; undertakes many of the obligations and risks of an insurer; and has the power, motive, and opportunity to act unscrupulously in the investigation and servicing of the insurance claims. To establish a breach of this duty of good faith, the plaintiff must establish that the third-party administrator's conduct was unreasonable and that the administrator knew its conduct was unreasonable or acted in a reckless disregard of whether its conduct was unreasonable. *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462 (Colo. 2003).

**Insurer did not engage in bad faith where policy informed customers that purchase of UM/UM coverage provided UM/UM coverage for all class one and class two insureds in all vehicles.** An offer that includes accurate information about additional benefits provided is sufficient, and those benefits do not need to be specifically identified as additional benefits. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

**10-1-102. Definitions.** As used in this title, unless the context otherwise requires:

(1) "Actuary" means a person designated by the commissioner as a qualified actuary based on requirements set forth in rules promulgated by the commissioner.

(2) "Admitted assets" includes the investments that are admitted assets of a domestic company under parts 1 and 2 of article 3 and part 4 of article 7 of this title and, in addition thereto, includes:

(a) Those assets defined as admitted by nationally recognized insurance statutory accounting principles; and

(b) Other assets deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by the commissioner.

(3) "Admitted company" or "authorized company" designates companies duly qualified and licensed to transact business in this state, under the provisions of this title. "Nonadmitted companies" or "unauthorized companies" designates companies not licensed to transact business in this state, under the provisions of this title (except article 15) and article 14 of title 24, C.R.S.

(3.5) "Bail insurance company" means an insurer engaged in the business of writing bail bonds through bonding agents and subject to regulation by the division.

(3.7) "Bail recovery" means actions taken by a person other than a peace officer to apprehend an individual or take an individual into custody because of the individual's failure to comply with bail conditions.

(4) "Charitable gift annuity" means an annuity that:

(a) Meets the definition and standards contained in section 501 (m) (5) of the federal "Internal Revenue Code of 1986", as amended;



(b) Contains on its face the following statement: "This annuity is not issued by an insurance company nor regulated by the Colorado division of insurance and is not protected by any state guaranty fund or protective association."

(c) Is issued or guaranteed by an organization that at all times during the three years preceding the date of the issuance of such annuity:

(I) Was qualified to receive contributions described in section 170 (c) of the federal "Internal Revenue Code of 1986", as amended; and

(II) If required as a condition of such qualification by provisions of the federal "Internal Revenue Code of 1986", as amended, was in receipt of notification from the federal internal revenue service that such organization was so qualified.

(5) "Commissioner" or "insurance commissioner" means the commissioner of insurance.

(6) (a) "Company", "corporation", "insurance company", or "insurance corporation" includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange, or suretyship except fraternal or benevolent orders and societies.

(b) "Company", "corporation", "insurance company", or "insurance corporation" does not include health maintenance organizations unless the specific provision of law by its terms applies to health maintenance organizations.

(c) For the purposes of a "company", "corporation", or "insurance company", a reciprocal insurer shall be considered a single economic entity.

(7) "Division" means the division of insurance.

(8) "Domestic" designates those companies incorporated or formed in this state.

(9) "Foreign", when used without limitation, includes all those companies formed by authority of any other state or government.

(10) "Institution" means any entity including, but not limited to, a corporation, a joint-stock company, a limited liability company, an association, a bank, a trust, a partnership, a joint venture, a special district, a government, or a quasi-governmental agency.

(11) "Insurable interest in property" means every interest in property or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured.

(12) "Insurance" means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.

(13) "Insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.

(14) "Motor vehicle rental agreement" means an agreement for the rental of a motor vehicle for transportation purposes, for a period of no more than ninety days, in return for a fee that is calculated on a daily, weekly, or monthly basis.

(15) "Motor vehicle rental company" means an entity that is in the business of renting, pursuant to motor vehicle rental agreements, motor vehicles that do not come within the definition of a commercial motor vehicle as set forth in section 42-2-402 (4), C.R.S.

(16) "Nonadmitted assets" includes, but is not limited to, those assets defined as nonadmitted by nationally recognized insurance statutory accounting principles. Nonadmitted assets shall not be taken into account in determining the financial condition of a company.

(17) (a) "Qualified United States financial institution" means an institution that is:

(I) Organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof; and

(II) Regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, trust companies, or savings and loan associations.

(b) If any qualified United States financial institution issues letters of credit, such institution shall have been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the

quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(c) If any qualified United States financial institution operates a trust, such institution shall be eligible to operate as a fiduciary of a trust and shall have been granted authority to operate with fiduciary powers.

(18) "Real estate" and "real property" include fee simple and leasehold estates therein.

(19) "Transact" as applied to insurance means and includes any of the following:

(a) Solicitation and inducement;

(b) Negotiations preliminary to effectuation of a contract of insurance;

(c) Execution of a contract of insurance;

(d) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of the contract obligations.

**Source:** L. 2003: Entire article RC&RE, p. 587, § 1, effective July 1. L. 2004: (3) amended, p. 897, § 5, effective May 21. L. 2012: (3) amended and (3.5) and (3.7) added, (HB 12-1266), ch. 280, p. 1491, § 1, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-102 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsections (3.5) and (3.7) and amending subsection (3) applies to offenses committed and applications submitted on or after July 1, 2012.

## ANNOTATION

- I. General Consideration.
- II. Company.
- III. Insurable Interest.
- IV. Insurance.
  - A. In General.
  - B. Construction.
- V. Insurer.

### I. GENERAL CONSIDERATION.

**Annotator's note.** Cases relevant to § 10-1-102 decided prior to its earliest source, L. 13, p. 321, § 2, have been included in the annotations to this section. Since § 10-1-102 is similar to § 10-1-102 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision also have been included in the annotations to this section.

### II. COMPANY.

An interinsurance exchange is included in the definition of insurance company in subsection (4). Because § 10-13-114 applies the regulatory remedies in §§ 10-3-401 to 10-3-414 to interinsurance exchanges, the insurance commissioner has the discretion to rehabilitate an interinsurance exchange in the same manner as any other insurance company. *Alias Smith & Jones v. Barnes*, 695 P.2d 302 (Colo. App. 1984).

### III. INSURABLE INTEREST.

One who makes a bona fide claim to equitable or legal title in property has an insur-

able interest, because he would suffer pecuniary damage in its destruction. *Am. Ins. Co. v. Donlon*, 16 Colo. App. 416, 66 P. 249 (1901).

A trustor may recover for loss. Where an insurance policy is issued to the owner covering property upon which there is a deed of trust and a loss occurs, the trustor may recover the entire loss irrespective of the encumbrance or the fact that the cestui que trust also had a policy on the property in which his interest, to the amount of the indebtedness, was insured. *Farmers' Union Mut. Protective Ass'n v. San Luis State Bank*, 86 Colo. 293, 281 P. 366 (1929).

Owner has some interest in the property conveyed after sale by the trustee, until such time as the trustee under the deed of trust executes his deed to the person entitled thereto. *Farmers' Union Mut. Protective Ass'n v. San Luis State Bank*, 86 Colo. 293, 281 P. 366 (1929).

Insurable interest is not dependent upon completeness or validity of title by which the property is held; a limited or qualified interest is enough. *Webb v. M.F.A. Mut. Ins. Co.*, 44 Colo. App. 210, 620 P.2d 38 (1980).

Subsequent bona fide purchaser of stolen motor vehicle has insurable interest. A subsequent bona fide purchaser of a stolen motor vehicle has title and the right to possession of the vehicle against the whole world except the rightful owner, and this constitutes an insurable interest. *Webb v. M.F.A. Mut. Ins. Co.*, 44 Colo. App. 210, 620 P.2d 38 (1980).

For cases dealing generally with the question of "insurable interest" from an academic standpoint, see *Michigan Fire & Marine Ins.*



Co. v. Wich, 8 Colo. App. 409, 46 P. 687 (1896); Helvetia Swiss Fire Ins. Co. v. Allis Co., 11 Colo. App. 264, 53 P. 242 (1898); Am. Cent. Ins. Co. v. Donlon, 16 Colo. App. 416, 66 P. 249 (1901); Farmers' Union Mut. Protective Ass'n v. San Luis State Bank, 86 Colo. 293, 281 P. 366 (1929); Simon v. Truck Ins. Exch., 757 P.2d 1123 (Colo. App. 1988).

#### IV. INSURANCE.

##### A. In General.

**Fraternal benefit societies, by §§ 10-1-113 and 10-14-104, are not governed by general insurance laws.** Neighbors of Woodcraft v. Westover, 99 Colo. 231, 61 P.2d 585 (1936).

**Contracts of an insurance corporation purporting to be organized not for profit are insurance contracts** under the definition recited in subsection (7) and the relationship between the company and its members that of insurer and insured. Int'l. Serv. Union Co. v. People ex rel. Wettengel, 101 Colo. 1, 70 P.2d 431 (1937).

##### B. Construction.

**The terms in an insurance contract are to be given their meaning according to common**

**usage.** Reed v. United States Fid. & Guar. Co., 176 Colo. 568, 491 P.2d 1377 (1971).

**In the case of ambiguity of any term, the court will look to the body of the insurance contract** for enlightenment, and the insurance contract terms will be construed most strongly against the insurer. Reed v. United States Fid. & Guar. Co., 176 Colo. 568, 491 P.2d 1377 (1971).

**In determining whether an intent to harm precludes coverage for injury** under a homeowner's insurance policy, where the injury is child molestation, the subjective intent of the injuring party is not relevant to the determination. Rather, an intent to injure may be inferred as a matter of law due to the inherently harmful nature of child molestation. Allstate Ins. Co. v. Troelstrup, 789 P. 2d 415 (Colo. 1990).

#### V. INSURER.

**A person in the business of selling motor vehicle service contracts is not an insurer.** In re First Assured Warranty Corp., 383 B.R. 502 (Bankr. D. Colo. 2008).

#### **10-1-103. Division of insurance - subject to termination - repeal of functions.**

(1) There is established a division of insurance within the department of regulatory agencies. This division is charged with the execution of the laws relating to insurance, and has a supervising authority over the business of insurance in this state. Offices of the division of insurance shall be provided in the capitol buildings group at Denver, Colorado. Whenever any law of this state refers to the insurance department of the state of Colorado, said law shall be construed as referring to the division of insurance.

(2) The commissioner of insurance, before incurring any expense for his or her office and the maintenance thereof, exclusive of salaries and wages, shall make requisition therefor upon and receive the approval of the executive director of the department of personnel as required by law.

(3) All direct and indirect expenditures of the division are paid from the division of insurance cash fund, which is hereby created in the state treasury. All fees collected under sections 8-44-204 (7), C.R.S., 8-44-205 (6), C.R.S., 10-2-413, 10-3-108, 10-3-207, 10-3.5-104, 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1), 10-23-102, 10-23-104, 24-10-115.5 (5), C.R.S., and 29-13-102 (5), C.R.S., not including fees retained under contracts entered into in accordance with section 10-2-402 (5) or 24-34-101, C.R.S., and all taxes collected under section 10-3-209 (4) designated for the division of insurance, are transmitted to the state treasurer, who shall credit the moneys to the division of insurance cash fund. The division shall use all moneys credited to the division of insurance cash fund as provided in this section and in section 24-48.5-106, C.R.S., subject to annual appropriation by the general assembly for the purposes authorized in this title and as otherwise authorized by law. Moneys in the fund do not revert to the general fund or to any other fund. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund is credited to the general fund.

(4) The division of insurance shall adopt a seal with the words "commissioner of insurance of the state of Colorado" and such other design as the commissioner may prescribe engraved thereon, by which it shall authenticate its proceedings, and of which the courts of this state shall take judicial notice. All copies of papers, certified by the commissioner and sealed with the seal of the division, shall have the same force and validity as the originals thereof in any suit or proceeding in any court in this state.

(5) The office of the division of insurance is a public office. The documents, materials, and information of the office or on file in the office are public records of this state, and information shall be furnished to anyone applying for the information; except that documents, materials, and information provided by the regulatory officials of any state, federal agency, or foreign country and by the national association of insurance commissioners shall be given confidential treatment if such documents, materials, and information are treated as confidential in such other state or foreign country or by such other federal agency or the national association of insurance commissioners. Notwithstanding any provision of this subsection (5) to the contrary, the commissioner or the commissioner's designee may share otherwise confidential documents, materials, and information with regulatory officials of any state, federal agency, or foreign country and with the national association of insurance commissioners if the association or the regulatory official of the other state, federal agency, or foreign country agrees and has the legal authority to maintain the same level of confidentiality as applies to the documents, materials, and information under Colorado law.

(6) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of this state, unless extended as provided in that section, are applicable to the division of insurance created by this section.

(b) (I) (A) Repealed.

(B) (Deleted by amendment, L. 2006, p. 75, § 1, effective March 27, 2006.)

(B.5) and (C) (Deleted by amendment, L. 2010, (HB 10-1220), ch. 197, p. 849, § 1, effective July 1, 2010.)

(D) The functions of the division of insurance are repealed, effective July 1, 2017, pursuant to this section and section 24-34-104 (48), C.R.S.

(E) (Deleted by amendment, L. 2010, (HB 10-1220), ch. 197, p. 849, § 1, effective July 1, 2010.)

(II) Prior to such repeals, the division of insurance shall be reviewed as provided for in section 24-34-104, C.R.S.

**Source:** L. 2003: Entire article RC&RE, p. 590, § 1, effective July 1. L. 2004: (3) amended, p. 1253, § 2, effective May 27. L. 2005: (6) amended, p. 761, § 11, effective June 1. L. 2006: (6)(b)(I)(B) and (6)(b)(I)(D) amended and (6)(b)(I)(B.5) and (6)(b)(I)(E) added, p. 75, § 1, effective March 27; (5) amended, p. 959, § 2, effective January 1, 2007. L. 2007: (6)(b)(I)(B.5) amended, p. 339, § 1, effective July 1. L. 2008: (6)(b)(I)(C) amended, p. 209, § 1, effective March 26. L. 2010: (6)(b)(I)(A), (6)(b)(I)(B.5), (6)(b)(I)(C), (6)(b)(I)(D), and (6)(b)(I)(E) amended, (HB 10-1220), ch. 197, p. 849, § 1, effective July 1. L. 2012: (3) and (6)(b)(I)(D) amended and (6)(b)(I)(A) repealed, (HB 12-1266), ch. 280, p. 1491, § 2, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-103 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsections (3) and (6)(b)(I)(D) and repealing subsection (6)(b)(I)(A) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For the legislative declaration contained in the 2006 act amending subsection (5), see section 1 of chapter 211, Session Laws of Colorado 2006.

## ANNOTATION

**Annotator's note.** Since § 10-1-103 is similar to § 10-1-103 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision have been included in the annotations to this section.

**Insurance department charged with execution of insurance related laws.** It is provided by this section that the insurance department shall be charged with the execution of the laws relating to insurance now and which may hereafter be enacted, and shall have a supervising

authority over the business of insurance in this state. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

**The interpretation of an insurance contract is a matter of law.** *Bd. of County Comm'rs v. Colo.*, 888 P.2d 352 (Colo. App. 1994).

**An insurance contract should be construed to carry out the intention of the parties,** and that intention should be ascertained, if possible, from the language in the policy alone; however,



if there is an ambiguity, uncertainty, or conflict as to coverage, courts should construe the policy in favor of the insured. Bd. of County Comm'rs v. Colo., 888 P.2d 352 (Colo. App. 1994).

**Ambiguity in insurance contract with regard to the retroactive date of the contract must be resolved by giving effect to the inten-**

**tion of the parties**, and, therefore, the date which the parties to the contract intended, based on undisputed testimony, is the date that coverage began. Bd. of County Comm'rs v. Colo., 888 P.2d 352 (Colo. App. 1994).

**Applied** in Travelers Indem. Co. v. Barnes, 191 Colo. 278, 552 P.2d 300 (1976).

**10-1-104. Commissioner of insurance - other employees.** (1) The commissioner of insurance is the head of the division of insurance. The commissioner shall be appointed by, and serve at the pleasure of, the governor, subject to confirmation of the appointment by the senate pursuant to section 23 of article IV of the state constitution. The commissioner shall be a person well versed in insurance, and an elector of the state of Colorado, and shall have no pecuniary interest in any insurance company or agency directly or indirectly other than as a policyholder.

(2) The commissioner shall have such employees as may be required for the transaction of the business of the office of the commissioner. One or more shall be deputy commissioners of insurance who are authorized in all matters to act as and for the commissioner of insurance in the absence of the commissioner. Examiners shall be classified as senior and junior. A senior examiner shall have had three full years' experience in the examination of insurance companies as an employee of a state insurance department. The salary and term of office of the commissioner and the employees of the division shall be fixed pursuant to section 13 of article XII of the state constitution.

**Source: L. 2003:** Entire article RC&RE, p. 592, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-104 as it existed prior to 2002.

**10-1-105. Actuary.** The commissioner may maintain in the division an actuary who is experienced, skilled, and fully competent to perform the actuarial duties of the division and to assist in or take charge of examinations of insurance companies under the general direction of the commissioner.

**Source: L. 2003:** Entire article RC&RE, p. 592, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-106 as it existed prior to 2002.

**Cross references:** For the oath required of an actuary, see § 10-1-106.

**10-1-106. Oath required of insurance commissioner and actuary.** The commissioner and the actuary, before entering upon their duties, shall take and subscribe to the oath required by the constitution of Colorado, which oath shall be filed in the office of the secretary of state.

**Source: L. 2003:** Entire article RC&RE, p. 592, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-105 as it existed prior to 2002.

**Cross references:** For the oath of office, see Colo. Const., art. XII, § 8.

**10-1-107. Personal fees prohibited.** Neither the commissioner nor any of the commissioner's employees shall be directly or indirectly employed by any insurance company, association, or society, in any capacity, or be directly or indirectly interested in any such insurance corporation, except as a policyholder; nor shall they or any of them charge any such insurance corporation or official any fee or take any valuable thing in payment for any service or otherwise, unless payment for such service is specifically authorized by law. The penalty for violation of this section shall be removal from office.

**Source:** L. 2003: Entire article RC&RE, p. 592, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-107 as it existed prior to 2002.

**Cross references:** For the official fees to be paid by insurance companies, see § 10-3-207.

**10-1-108. Duties of commissioner - reports - publications - fees - disposition of funds - adoption of rules - examinations and investigations.** (1) It is the duty of the commissioner to:

(a) File in offices of the division, and safely keep, all books and papers required by law to be filed therein and to keep and preserve in permanent form a full record of the commissioner's proceedings, including a concise statement of the condition of such insurance companies reported to or examined by the commissioner;

(b) Issue certificates of authority to transact insurance business to any insurance companies that fully comply with the laws of this state;

(c) Issue such other certificates as required by law in the organization of insurance companies and the transaction of the business of insurance; and

(d) Generally, do and perform with justice and impartiality all such duties as are or may be imposed on the commissioner by the laws in relation to the business of insurance in this state.

(2) The commissioner shall require every domestic insurance company to keep its books, records, accounts, and vouchers in such a manner that the commissioner or the commissioner's authorized representatives may readily verify its annual statements and ascertain whether the company is solvent and has complied with the provisions of law. The commissioner shall annually make a tabular statement and synopsis of the several statements as accepted by the commissioner.

(3) The commissioner shall furnish to all insurance companies doing business in this state blanks for the filing of statements as required by law. The commissioner, on retiring from office, shall deliver to his or her qualified successor all furniture, papers, and property pertaining to the commissioner's office.

(4) It is the duty of the commissioner to examine all requests and applications for licenses to be issued under the authority of part 4 of article 2 of this title, and the commissioner is authorized to refuse to issue any such licenses until the commissioner is satisfied of the qualifications and general fitness of the applicant in accordance with the requirements of the insurance laws.

(5) It is the duty of the commissioner to make such investigations and examinations as are authorized by this title (except article 15) and article 14 of title 24, C.R.S., and to investigate such information as is presented to the commissioner by authority that the commissioner believes to be reliable pertaining to violation of the insurance laws of Colorado, and it is the commissioner's duty to present the result of such investigations and examinations for further investigation and prosecution to either the district attorney of the proper judicial district or the attorney general when, in the commissioner's opinion, such violations justify such action.

(6) Any publication circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(7) It is the duty and responsibility of the commissioner to supervise the business of insurance in this state to assure that it is conducted in accordance with the laws of this state and in such a manner as to protect policyholders and the general public.

(8) It is the duty of the commissioner to examine all requests and applications from insurers for certificates of authority to be issued pursuant to section 10-3-105. The commissioner is authorized to refuse to issue any such certificates of authority until the commissioner is reasonably satisfied as to the qualifications and general fitness of the insurer to comply with the requirements of the provisions of this title (except article 15) and article 14 of title 24, C.R.S.

(9) It is the duty of the commissioner to transmit all surcharges, costs, taxes, penalties, and fines collected by the division of insurance under any provision of this title (except article 15) and article 14 of title 24, C.R.S., to the department of the treasury. All funds so



transmitted shall be credited to the general fund; except that any funds collected by the commissioner as reimbursement for out-of-state travel costs in conjunction with the examination of an insurance company or with an activity to improve regulation of insurance companies are hereby continuously appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(10) It is the duty of the commissioner to encourage the dissemination to the public of general information concerning insurance by those engaged in the business of insurance, so as to work toward informed choices of insurance needs and options.

(11) It is the duty of the commissioner to evaluate insurance policies for long-term care to determine their compliance with the provisions of article 19 of this title and to provide insurance companies with a written statement indicating the results of such determination.

(12) It is the duty of the commissioner to oversee the operation of electronic data interchange projects for purposes of uniform billing and electronic data exchange for health benefit coverages in Colorado. In carrying out such duties, the commissioner shall coordinate with the departments of labor and employment, public health and environment, and health care policy and financing, as appropriate.

(13) (a) If determined appropriate for purposes of licensure of provider networks and individual providers as provided in section 6-18-302 (1) (b), C.R.S., the commissioner may adopt rules after consultation with providers and other appropriate persons that set forth standards or requirements specific to licensed provider networks or licensed individual providers concerning solvency and operational capacity or the performance of services consistent with the extent of risk being accepted by the licensed provider network or licensed individual provider.

(b) In determining the need for and the content of such rules, the commissioner shall take into consideration:

(I) The differences between licensed provider networks or licensed individual providers and the type, amount, and extent of risk they accept and services they provide as compared with that accepted by traditional sickness and accident insurers, nonprofit hospital, medical-surgical, and health service corporations, and health maintenance organizations;

(II) The types of information the commissioner would need to assess a provider network or individual provider's ability to accept and manage risk and monitor material changes in the financial solvency or operational capabilities of a provider network or individual provider;

(III) The need to protect consumers, monitor the financial solvency of licensed provider networks and licensed individual providers, and assure the provision of services to consumers, including reasonable access to coverage, according to contractual obligations; and

(IV) Whether such rules would give a licensed provider network or licensed individual provider an unreasonable competitive advantage or disadvantage as compared to traditional insurers, nonprofit hospital, medical-surgical, and health service corporations, and health maintenance organizations offering similar products under similar circumstances.

(c) The commissioner may also consider whether rates are excessive, inadequate, or unfairly discriminatory.

(d) The commissioner may establish a fee to cover the direct and indirect costs of the regulation of provider networks pursuant to the provisions of this subsection (13) and part 3 of article 18 of title 6, C.R.S.

**Source:** **L. 2003:** Entire article RC&RE, p. 593, § 1, effective July 1. **L. 2004:** (5), (8), and (9) amended, p. 897, § 6, effective May 21. **L. 2012:** (5), (8), and (9) amended, (HB 12-1266), ch. 280, p. 1492, § 3, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-108 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsections (5), (8), and (9) applies to offenses committed and applications submitted on or after July 1, 2012.

## ANNOTATION

**Annotator's note.** Since § 10-1-108 is similar to § 10-1-108 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision have been included in the annotations to this section.

**Title insurance companies subject to commissioner's general regulatory powers.** Both domestic and foreign title insurance companies are and have been subject to the general regulatory powers vested in the state insurance commissioner. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

**Insurance commissioner's authority is broad** and necessarily includes the authority to determine whether an insurance company has acted in bad faith. *Hartford Fire Ins. Co. v. Colo. Div. of Ins.*, 824 P.2d 76 (Colo. App. 1991).

**Claims asserted against the state attorney general must be dismissed** where the ground for the claim is that she is charged under Colorado law with enforcing Colorado's statutory

provisions governing the business of insurance, including the enforcement of workers' compensation statutes, when in fact she is not responsible for enforcing either insurance or workers' compensation laws and may become involved in prosecuting related matters only at the request of the commissioner of insurance or the director of workers' compensation. *Fuller v. Norton*, 881 F. Supp. 468 (D. Colo. 1995).

**The commissioner may award attorney fees** under the common fund doctrine where it is necessary for the commissioner to discharge his or her responsibilities in an equitable conversion proceeding of a nonprofit corporation to a for-profit stock insurance company pursuant to §10-16-324 and if nothing prohibits such an award. However, the commissioner does not have discretion to award attorney fees for lobbying effort conducted prior to the establishment of the commissioner's authority to preside over the conversion proceeding. *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008 (Colo. 2003).

**10-1-109. Rules of commissioner.** (1) The commissioner may establish, and from time to time amend, such reasonable rules as are necessary to enable the commissioner to carry out the commissioner's duties under the laws of the state of Colorado.

(2) The commissioner shall adopt rules to ensure that payments to the subsequent injury fund created in section 8-46-101, C.R.S., the workers' compensation cash fund, created in section 8-44-112 (7), C.R.S., the cost containment fund created in section 8-14.5-108, C.R.S., and the major medical insurance fund created in section 8-46-202, C.R.S., from surcharges on premiums paid for policies of workers' compensation insurance that feature deductibles in excess of the limit set forth in section 8-44-111 (1), C.R.S., reflect the value of any reduction in premium achieved through the use of such deductibles. Such rules shall apply only to claims made on policies issued or renewed after the effective date of the rules. In adopting such rules, the commissioner shall determine the most effective method of establishing the value of deductibles in excess of such limits and ensuring that payments reflect such value.

**Source:** L. 2003: Entire article RC&RE, p. 595, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-109 as it existed prior to 2002.

**Cross references:** For the rule-making procedures, see article 4 of title 24.

## ANNOTATION

**Annotator's note.** Since § 10-1-109 is similar to § 10-1-109 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision have been included in the annotations to this section.

**Authority to issue proper regulations.** The commissioner of insurance and the director of revenue have the authority, individually or jointly, to issue proper regulations to enforce relevant statutes. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Deference given to construction of statute by administrative official.** Construction of a statute by administrative official charged with its enforcement shall be given great deference by the courts. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**However, administrative regulations are not absolute rules.** *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Action by administrative official in excess of authority.** When an administrative official



misconstrues a statute and issues a regulation beyond the scope of a statute, it is in excess of administrative authority granted, and the regulation is invalid. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Regulation entitled "Colorado Auto Accident Reparations Act (No Fault) Interpretative**

**Guidelines" held invalid.** *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Applied in** *Augustin v. Barnes*, 41 Colo. App. 533, 592 P.2d 9 (1978).

**10-1-110. Grounds and procedure for suspension or revocation of certificate or license of entities.** (1) The certificate of authority of an insurance company to do business in this state may be revoked or suspended by the commissioner for any reason specified in this title and article 14 of title 24, C.R.S. Specifically, the certificate may be suspended or revoked by the commissioner for reasons that include, but are not limited to:

- (a) Insolvency or impairment, as defined in section 10-3-212;
- (b) Failure to meet the requirements of section 10-3-201;
- (c) Refusal or failure to submit an annual report, as required by section 10-3-109, or any other report required by law or by lawful order of the commissioner;
- (d) Doing an unauthorized insurance business in another state, as set forth in section 10-1-117;
- (e) Failure to comply with the provisions of its own charter or bylaws, if such failure renders its operation hazardous to the public or to its policyholders;
- (f) Failure to submit to examination or any legal obligation relative thereto;
- (g) Refusal to pay the cost of examination, as authorized by law;
- (h) Use of methods that, although not otherwise specifically proscribed by law, nevertheless render its operation hazardous, or its condition unsound, to the public or to its policyholders;

(i) Failure to otherwise comply with the law of this state, if such failure renders its operation hazardous to the public or to its policyholders;

(j) Use of practices or existence of conditions that render its financial position unsound to the public or its policyholders.

(2) If the commissioner finds upon examination, hearing, or other evidence that any foreign or domestic insurance company has committed any of the acts specified in subsection (1) of this section, or any other act specified in this title and article 14 of title 24, C.R.S., for which the penalty is suspension or revocation of the certificate of authority, the commissioner may suspend or revoke such certificate of authority, if he or she deems it in the best interest of the public and the policyholders of the company, notwithstanding any other provision of said references. Notice of any revocation shall be published in one or more daily newspapers in Denver that have a general state circulation. Before suspending or revoking any certificate of authority of an insurance company, the commissioner shall grant the company fifteen days in which to show cause why such action should not be taken. Any final decision of the commissioner to suspend or revoke a certificate of authority or license of any person or entity regulated by the division of insurance shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(3) If the commissioner suspends the license or certificate of authority of any entity regulated by the division of insurance, such license or certificate may be revoked one year after the date of suspension if the reason for such suspension is not corrected by the entity. The suspension or revocation of a license or certificate of authority of any entity regulated by the division of insurance shall automatically result in the suspension or revocation, as appropriate, of any license of any insurance agent of any such entity.

(4) If the commissioner finds upon examination or other evidence that any foreign or domestic insurance company has committed any act specified in subsection (1) of this section, the commissioner after notice and hearing may issue an order requiring that the insurance company cease and desist committing such act. If the commissioner believes an emergency exists, the commissioner may enter a cease-and-desist order at once, and a hearing shall be held as soon as practicable. Pending such hearing and decision thereon, the emergency order shall remain in effect subject to the power of the commissioner on the commissioner's own motion or on petition to vacate such order.

**Source: L. 2003:** Entire article RC&RE, p. 596, § 1, effective July 1. **L. 2012:** IP(1) and (2) amended, (HB 12-1266), ch. 280, p. 1493, § 4, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-111 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (1) and subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

#### ANNOTATION

**Annotator's note.** Since § 10-1-110 is similar to § 10-1-111 as it existed prior to the 2002 repeal of article 1 of title 10, a relevant case construing that provision has been included in the annotations to this section.

**"Hazardous", as used in subsection (1)(h) and (1)(i) of this section is not limited to financially hazardous conditions.** Hartford Fire Ins. Co. v. Colo. Div. of Ins., 824 P.2d 76 (Colo. App. 1991).

**10-1-111. Invoking aid of courts.** The commissioner, through the attorney general, may invoke the aid of the courts through injunction or other proper process, mandatory or otherwise, to enforce any proper order made by the commissioner or action taken by the commissioner; but nothing in this title (except article 15) and article 14 of title 24, C.R.S., shall be construed to prevent the company or person affected by any order, ruling, proceeding, act, or action of the commissioner, or any person acting on behalf and at instance of the commissioner, from testing the validity of the same in any court of competent jurisdiction, through injunction, appeal, or other proper process or proceeding, mandatory or otherwise.

**Source: L. 2003:** Entire article RC&RE, p. 597, § 1, effective July 1. **L. 2004:** Entire section amended, p. 898, § 7, effective May 21. **L. 2012:** Entire section amended, (HB 12-1266), ch. 280, p. 1493, § 5, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-112 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-1-112. Policy conditions required by other states.** The policies of a domestic insurance company, when issued or delivered in any other state, territory, district, or country, may contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in this title (except article 15) and article 14 of title 24, C.R.S., to the contrary notwithstanding.

**Source: L. 2003:** Entire article RC&RE, p. 597, § 1, effective July 1. **L. 2004:** Entire section amended, p. 898, § 8, effective May 21. **L. 2012:** Entire section amended, (HB 12-1266), ch. 280, p. 1493, § 6, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-1-115 as it existed prior to 2002.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-1-113. No seal required on policies.** All policies or contracts made or entered into by any domestic company may be made with or without the seal thereof. The policies or contracts shall be subscribed by the president or such other officers as may be designated by the bylaws for that purpose, and shall be attested by the secretary, and, being so subscribed, shall be obligatory upon such company.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-116 as it existed prior to 2002.



**10-1-114. Sale of premium notes prohibited.** It is unlawful for any insurance company or any agent thereof who has accepted a premium note in payment for a policy of insurance to hypothecate, sell, assign, dispose of, or attempt to collect said note prior to the delivery of said insurance policy to the applicant.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-118 as it existed prior to 2002.

**10-1-115. Penalty.** If any insurance company or any agent of any such company violates any of the provisions of section 10-1-114, the commissioner has the power and is authorized to revoke the certificate of authority of any company so offending or to cancel the license of any such agent who violates any provisions of section 10-1-114.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-119 as it existed prior to 2002.

**Cross references:** For the revocation of a certificate of authority to do business, see § 10-1-110.

**10-1-116. Defamation of other companies.** It is unlawful for any insurance company doing business in this state, or any officer, director, clerk, employee, or agent thereof, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of any pamphlet, circular, article, literature, or statement of any kind that is defamatory of any other insurance company doing business in this state, or licensed to sell its capital stock within this state, that contains any false and malicious criticism or false and malicious statement calculated to injure such company in its reputation or business. Any officer, director, clerk, employee, or agent of any insurance company violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a term of not more than twelve months, or by both such fine and imprisonment.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-120 as it existed prior to 2002.

**10-1-117. Company unauthorized in other states.** If, upon investigation, the commissioner finds that any insurance company incorporated under the laws of Colorado is doing business in another state or territory without having first procured a license or authority from such state or territory, if any is required, authorizing it to do business therein, the commissioner may revoke the authority of such company to do business in this state.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-121 as it existed prior to 2002.

**Cross references:** For the revocation of a certificate of authority to do business, see § 10-1-110.

**10-1-118. Foreign companies - unsatisfied judgments - suspension.** (1) If a judgment against a foreign insurance company is unsatisfied, and execution has issued on said judgment, and the return of the sheriff discloses that the sheriff cannot fully satisfy such judgment, the judgment creditor or judgment creditor's attorney may file with the commissioner, in triplicate, a complaint setting forth such facts. The commissioner shall mail a copy of such complaint to the home office of such insurance company, at the address shown

in the records of the division of insurance, and a copy to the Colorado office or the Colorado general agent of such insurance company.

(2) If said insurance company does not, within thirty days after such mailing, pay and discharge said judgment or show good cause to the commissioner for the failure to pay such judgment, the commissioner, upon satisfactory proof of the allegations of the complaint, shall forthwith suspend the license or right of such insurance company to do business in this state. If good cause, previously shown, ceases to exist and the judgment remains unpaid, the commissioner shall suspend such license or right.

(3) The commissioner shall reinstate the license or right to do business in this state when the insurance company has fully paid such judgment.

**Source: L. 2003:** Entire article RC&RE, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-122 as it existed prior to 2002.

**Cross references:** For the suspension of a certificate of authority to do business, see § 10-1-110.

**10-1-119. Insurance vending machines prohibited.** No policy or contract of insurance of any kind shall be sold or dispensed through any mechanical device or vending machine, but this section shall not be construed as to prevent the use of office machines of any type by an insurance company. Insurance shall be sold only by an insurance producer, as defined in section 10-2-103 (6).

**Source: L. 2003:** Entire article RC&RE, p. 599, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-123 as it existed prior to 2002.

**10-1-120. Reporting of medical malpractice claims.** (1) Each insurance company licensed to do business in this state and engaged in the writing of medical malpractice insurance for licensed practitioners shall send to the Colorado medical board, in the form prescribed by the commissioner of insurance, information relating to each medical malpractice claim against a licensed practitioner that is settled or in which judgment is rendered against the insured.

(2) The insurance company shall provide such information as is deemed necessary by the Colorado medical board to conduct a further investigation and hearing.

**Source: L. 2003:** Entire article RC&RE, p. 599, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1977, § 49, effective July 1.

**Editor's note:** This section is similar to former § 10-1-124 as it existed prior to 2002.

**10-1-121. Reporting of malpractice claims against physical therapists.** (1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapists licensed under article 41 of title 12, C.R.S., shall send to the director of the division of professions and occupations, in the department of regulatory agencies, in the form prescribed by the commissioner of insurance, information relating to each claim involving physical therapy malpractice or against any such physical therapist that is settled or in which judgment is rendered against the insured.

(2) Every insurance company licensed to do business in this state that makes payment under a policy of insurance in settlement of a claim of physical therapy malpractice, or in satisfaction of a judgment for such malpractice, shall report to the secretary of health and human services, in accordance with 42 U.S.C. secs. 11131 and 11134, the following information:

- (a) The name of any physical therapist for whose benefit the payment is made;
- (b) The amount of the payment;



- (c) The name, if known, of any hospital with which the physical therapist is affiliated or associated;
- (d) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based; and
- (e) Such other information as the secretary of health and human services determines is required for appropriate interpretation of the information so reported.

**Source:** L. 2003: Entire article RC&RE, p. 599, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-124.2 as it existed prior to 2002.

**10-1-122. Reporting of malpractice claims against architects.** Each insurance company doing business in this state and engaged in the writing of malpractice insurance for architects shall send to the state board of licensure for architects, professional engineers, and professional land surveyors, in the form prescribed by the commissioner, information relating to each malpractice claim against a licensed architect or a corporation, partnership, or group of persons practicing architecture that is settled or in which judgment is rendered against the insured within ninety days after the effective date of such settlement or judgment.

**Source:** L. 2003: Entire article RC&RE, p. 600, § 1, effective July 1. L. 2006: Entire section amended, p. 741, § 3, effective July 1.

**Editor's note:** This section is similar to former § 10-1-124.5 as it existed prior to 2002.

**Cross references:** For the provisions concerning architects, see article 4 of title 12.

**10-1-123. Reporting of claims against plumbers.** Each insurance company licensed to do business in this state and engaged in the writing of insurance for plumbers shall send within ninety days to the examining board of plumbers, in the form prescribed by the commissioner, information relating to each malpractice claim against a licensed plumber that is settled or in which judgment is rendered against the insured.

**Source:** L. 2003: Entire article RC&RE, p. 600, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-124.6 as it existed prior to 2002.

**Cross references:** For the provisions concerning plumbers, see article 58 of title 12.

**10-1-124. Reporting of podiatric malpractice claims.** (1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for licensed podiatrists shall send to the Colorado podiatry board, in the form prescribed by the commissioner, information relating to each malpractice claim against a licensed podiatrist that is settled or in which judgment is rendered against the insured.

(2) Such information shall include any information deemed necessary by the Colorado podiatry board to conduct a further investigation and hearing.

**Source:** L. 2003: Entire article RC&RE, p. 600, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-124.7 as it existed prior to 2002.

**Cross references:** For the provisions concerning podiatrists, see article 32 of title 12.

**10-1-125. Reporting of malpractice claims against optometrists.** (1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for optometrists shall send to the state board of optometry, in the form prescribed

by the commissioner, information relating to each malpractice claim against a licensed optometrist that is settled or in which judgment is rendered against the insured.

(2) Such information shall include any information deemed necessary by the state board of optometry to conduct a further investigation and hearing.

**Source:** L. 2003: Entire article RC&RE, p. 601, § 1, effective July 1. L. 2011: Entire section amended, (SB 11-094), ch. 129, p. 450, § 28, effective April 22.

**Editor's note:** This section is similar to former § 10-1-124.9 as it existed prior to 2002.

**Cross references:** For the provisions concerning optometrists, see article 40 of title 12.

**10-1-126. Training program for persons working with the aging.** The division of insurance shall develop a training program for persons working with the aging on the local level that will enable them to assist the elderly in dealing with their medicare supplemental insurance problems.

**Source:** L. 2003: Entire article RC&RE, p. 601, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-125 as it existed prior to 2002.

**10-1-127. Discretionary use of administrative law judges.** Whenever the commissioner or the division of insurance pursuant to this title or any other provision of law is obligated or authorized to hold a hearing, the commissioner, at his or her discretion, may designate an employee of the division of insurance who has administrative responsibilities to act as a hearing officer or may use the services of an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct the hearing according to the "State Administrative Procedure Act". Any decision by such a designated hearing officer or appointed administrative law judge shall be an initial decision and, in the absence of an appeal to the division of insurance or a review upon motion of the commissioner as provided in section 24-4-105, C.R.S., shall thereupon become the decision of the division of insurance. Any final decision of the commissioner or the division of insurance shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 2003: Entire article RC&RE, p. 601, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-126 as it existed prior to 2002.

**Cross references:** For the provisions concerning the "State Administrative Procedure Act", see article 4 of title 24.

**10-1-128. Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration.** (1) For purposes of this title, articles 40 to 47 of title 8, C.R.S., and articles 6, 7, 29.5, 32, 33, 35, 36, 38, 40, 41, 41.5, and 43 of title 12, C.R.S., a fraudulent insurance act is committed if a person knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, a purported insurer, or any producer thereof any written statement as part or in support of an application for the issuance or the rating of an insurance policy or a claim for payment or other benefit pursuant to an insurance policy that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto. For purposes of this section, "written statement" includes a patient medical record as such term is defined in section 18-4-412 (2) (a), C.R.S., and any bill for medical services.

(2) (a) The general assembly finds and declares that insurance fraud is expensive; that it increases premiums and places businesses at risk; and that it reduces consumers' ability to raise their standards of living and decreases the economic vitality of this state. The



general assembly further finds and declares that the state of Colorado must aggressively confront the problem of insurance fraud by facilitating the detection of and reducing the occurrence of fraud through stricter enforcement and deterrence and by encouraging greater cooperation among consumers, the insurance industry, and the state in coordinating efforts to combat insurance fraud.

(b) Colorado has addressed insurance fraud in various statutes, including but not limited to the civil and administrative provisions found in this section, part 4 of article 2 of this title, parts 1, 2, 9, and 11 of article 3 of this title, and numerous other provisions of this title. It has also been addressed in criminal provisions found in parts 1, 2, and 3 of article 2 of title 18, part 1 of article 4 of title 18, part 1 of article 5 of title 18, and section 18-5-205, C.R.S. These statutory provisions impose regulatory oversight and severe civil and criminal penalties on authorized and unauthorized insurance companies and other persons who commit insurance fraud. The purpose of this section is to further improve regulatory oversight of licensed persons who commit insurance fraud and provide additional remedies to aggrieved persons.

(3) An allegation of a fraudulent insurance act shall not excuse an insurance company from its duty to promptly investigate a claim.

(4) (a) Each insurance company licensed to do business in this state that, in a lawsuit involving a fraudulent insurance act, obtains a judgment or settlement against a person who is licensed by the state of Colorado and whose services are compensated in whole or in part, directly or indirectly, by insurance claim proceeds shall send notice of such settlement or judgment to the appropriate Colorado state licensing board, in the form prescribed by the executive director of the department of regulatory agencies. No cause of action shall arise against any insurance company or individual for providing information as provided in this subsection (4).

(b) Every person who, in a lawsuit involving a fraudulent insurance act, obtains a judgment or settlement against a person who is licensed by the state of Colorado and whose services are compensated in whole or in part, directly or indirectly, by insurance claim proceeds, may send to the appropriate Colorado state licensing board notice of such settlement or judgment. No cause of action shall arise against any person for providing information as provided in this subsection (4).

(c) Every person who obtains a judgment or settlement involving a fraudulent insurance act by an insurance company or an agent of an insurance company may send to the Colorado division of insurance within the department of regulatory agencies notice of such judgment or settlement, including any evidence of a fraudulent insurance act. No cause of action shall arise against any person for providing information as provided in this subsection (4).

(5) (a) Every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (5) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems;

(II) Educate appropriate employees about fraud detection and the company's anti-fraud plan;

(III) Provide for the hiring of or contracting for one or more fraud investigators;

(IV) Report suspected or actual insurance fraud to the appropriate law enforcement and regulatory entities in the investigation and prosecution of insurance fraud.

(b) The commissioner of insurance may review a licensed insurance company's anti-fraud plan in connection with a market conduct examination to determine whether such plan complies with the requirements of paragraph (a) of this subsection (5).

(c) Every licensed insurance company doing business in this state shall include, as part of its annual report as required in section 10-3-109, a summary of its anti-fraud efforts as described in paragraph (a) of this subsection (5).

(d) The anti-fraud plan of an insurance company and the summary of anti-fraud efforts prepared as required in paragraph (c) of this subsection (5) are not public records and are exempted from article 72 of title 24, C.R.S.; are proprietary and not subject to public examination; and are not discoverable or admissible under the Colorado rules of civil procedure in any civil litigation.

(e) Any insurance company or producer of an insurance company that has committed a fraudulent insurance act shall be subject to available disciplinary action by the commissioner of insurance.

(f) The responsibility of an insurance company under this section to prevent, detect, and investigate insurance fraud shall not excuse its duty to comply with section 10-3-1104 or any other applicable insurance law.

(g) (a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

**It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.**

(b) This subsection (6) shall not apply to reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

**Source: L. 2003:** Entire article RC&RE, p. 601, § 1, effective July 1. **L. 2006:** (2)(b) amended, p. 1489, § 8, effective June 1.

**Editor's note:** This section is similar to former § 10-1-127 as it existed prior to 2002.

#### ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988). For article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

**Annotator's note.** Since § 10-1-128 is similar to § 10-1-127 as it existed prior to the 2002 repeal of article 1 of title 10, relevant cases construing that provision have been included in the annotations to this section.

**This section does not provide a standard for pleading,** but merely sets forth the elements

of a fraudulent insurance act. A claim sounding in fraud still must be stated with the particularity required by C.R.C.P. 9(b). *State Farm Mutual Auto. Ins. Co. v. Parrish*, 899 P.2d 285 (Colo. App. 1994).

**The legislative declaration in subsection (1.5)(a) is a clear expression of the public policy concerning insurance fraud and is sufficient to support a retaliatory discharge claim.** *Flores v. Am. Pharmaceutical Servs., Inc.*, 994 P.2d 455 (Colo. App. 1999).

**10-1-129. Fraudulent insurance acts - enforcement.** The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal conduct related to insurance fraud pursuant to this title and titles 8



and 18, C.R.S. The cost to the attorney general of such investigations and prosecutions shall be paid from fees collected from entities regulated by the division pursuant to section 24-31-104.5, C.R.S.

**Source:** **L. 2003:** Entire article RC&RE, p. 604, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1385), ch. 204, p. 883, § 3, effective May 5. **L. 2012:** Entire section amended, (SB 12-110), ch. 158, p. 561, § 5, effective July 1.

**Editor's note:** This section is similar to former § 10-1-127.5 as it existed prior to 2002.

**10-1-130. Availability of sickness, health, and accident insurance.** (1) The commissioner shall assess the availability of sickness, health, and accident insurance in Colorado with a view to identifying specific groups of persons to whom such coverage is unavailable by virtue of cost, preexisting condition, or other circumstances.

(2) Repealed.

**Source:** **L. 2003:** Entire article RC&RE, p. 604, § 1, effective July 1; entire section amended, p. 2053, § 2, effective August 6.

**Editor's note:** (1) Subsection (1) is similar to former § 10-1-130 as it existed prior to 2002.

(2) Subsection (2)(d) provided for the repeal of subsection (2), effective July 1, 2010. (See L. 2003, p. 604.)

**Cross references:** For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 322, Session Laws of Colorado 2003.

**10-1-131. Duties to third parties - rules.** (1) Pursuant to rules promulgated by the commissioner, an insurer shall notify any additional insured by endorsement on a general liability policy, whose interests are affected by a claim, of the results of the insurer's investigation of such claim and the status of the claim within a reasonable period of time as determined by the commissioner. Such notice shall include a statement confirming or denying coverage of the claim and, if coverage is denied, the reasons for denying coverage of the claim or any portion of the claim. In the event coverage has not been determined, a copy of the reservation of rights letter shall constitute sufficient notice.

(2) Failure to notify any additional insured by endorsement on a general liability policy pursuant to this section shall subject the insurer to the provisions of sections 10-3-1108 and 10-3-1109.

(3) The provisions of this section shall not apply to those claims under a general liability policy upon which a lawsuit has been filed.

**Source:** **L. 2003:** Entire article RC&RE, p. 604, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-132 as it existed prior to 2002.

**10-1-132. Oversight of the general assembly.** Nothing in this title shall limit the ability of the general assembly to direct the accounting principles to be used by insurers authorized in this state in order to create uniformity.

**Source:** **L. 2003:** Entire article RC&RE, p. 605, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-133 as it existed prior to 2002.

**10-1-133. Consumer insurance council - creation - advisory body - appointment of members - meetings - consumers' choice award - repeal.** (1) There is hereby created in the division the consumer insurance council, also referred to in this part 1 as the "council". The council shall be an advisory body to the commissioner concerning matters

of interest to the public. Nothing in this section shall divest the commissioner of his or her authority to regulate the business of insurance.

(2) The council shall consist of up to fifteen members, all of whom shall represent consumer organizations. To the greatest extent possible, the council shall reflect the geographic diversity of the state and seek representation from each congressional district. Insurance producers, insurance industry representatives, and actively practicing health care providers are not eligible for membership on the council. Members of the council shall be appointed by the commissioner and shall serve two-year terms with a maximum of three consecutive terms. Members shall serve without compensation; except that members who reside outside of the Denver metropolitan area may be reimbursed for mileage to attend meetings in Denver. The council shall act by consensus.

(3) The council shall meet no more than eight times per year. All meetings of the council shall be open to the public. General meetings of the council shall be held at the office of the division. The council may meet in other locations of the state as agreed upon by the council. Notwithstanding any provision of subsection (2) of this section to the contrary, if the council meets in a location outside of the Denver metropolitan area, members of the council may be reimbursed for mileage to attend the meeting. A council member may request a special meeting. Requests for special meetings shall be made to the chair of the council. All members of the council may request topics of discussion for the council. Members of the council may participate in meetings via telephonic communications.

(4) Three or more unexcused absences of a member of the council shall be grounds for the removal of the member. The chair of the council, in consultation with the commissioner, shall determine whether a member with three or more unexcused absences shall continue service on the council. If a member is removed, the commissioner shall appoint a new member to serve the remaining portion of the two-year term.

(5) (a) The council shall elect a chair from its membership. The chair shall serve a one-year term and may be elected to another one-year term.

(b) The council shall elect a vice-chair from its membership. The vice-chair shall serve in the absence of the chair. The vice-chair shall serve a one-year term and may be elected to another one-year term.

(5.5) The council may issue an annual consumers' choice award to a health insurance carrier that has achieved the lowest rates, highest benefits ratio, and lowest complaint ratio for each line of insurance. In choosing the carrier to receive the award, the council may also consider carrier-provided consumer education, the extent of collaboration with the community to meet the needs of the people the carrier serves, health care transparency, health care innovation, the extent of consumer choice regarding health care plans, and other relevant consumer-related choices as determined by the council.

(6) This section is repealed, effective July 1, 2018; except that, prior to its repeal, the council shall be reviewed pursuant to section 2-3-1203, C.R.S.

**Source: L. 2008:** Entire section added, p. 158, § 1, effective July 1; (5.5) added, p. 2255, § 8, effective July 1. **L. 2009:** (5.5) and (6) amended, (SB 09-292), ch. 369, p. 1940, § 9, effective August 5.

**Cross references:** In 2008, subsection (5.5) was enacted by the "Fair Accountable Insurance Rates Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008.

**10-1-134. Office of insurance ombudsman - plan - report to joint budget committee.** On or before September 15, 2008, the commissioner shall present a plan to the joint budget committee of the general assembly regarding the establishment of an office of insurance ombudsman. The plan shall include an assessment of the need to establish the office, a plan to implement the office, and the estimated costs associated with establishing and maintaining the office. The plan shall require the ombudsman to assist consumers with issues related to insurance availability, claims processing, coverage questions, and other matters related to insurance consumer education and assistance.

**Source: L. 2008:** Entire section added, p. 2247, § 2, effective August 5.



**10-1-135. Reimbursement for benefits - limitations - notice - definitions - legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) When a payer of benefits seeks repayment of the benefits provided to an injured party, the repayment reduces the amount available to the injured party to compensate him or her for injuries and damages other than the cost of medical care and medical services;

(b) Reimbursement or repayment of benefits should not be permitted when the injured party would not be fully compensated for his or her injuries and damages;

(c) It is in the best interests of the citizens of this state to ensure that each insured injured party recovers full compensation for bodily injury caused by the act or omission of a third party, and that such compensation is not diminished by repayment, reimbursement, or subrogation rights of the payer of benefits;

(d) This law regulating insurance and health benefit plans is intended to ensure that an injured party who recovers damages for bodily injuries caused by a third party and receives benefits pursuant to an insurance policy, contract, or benefit plan is fully compensated for his or her injuries and damages before the payer of benefits may seek repayment of benefits provided to the injured party;

(e) In the absence of this section, payers of benefits may seek repayment of benefits out of a recovery obtained by the injured party without paying attorney fees incurred by the injured party in obtaining the recovery, thereby benefitting from attorney services for which they did not pay;

(f) This section is intended to require a payer of benefits to pay a proportionate share of the attorney fees when the payer of benefits is a beneficiary of the attorney services paid for by the injured party.

(2) As used in this section, unless the context otherwise requires:

(a) "Benefits" means payment or reimbursement of health care expenses, health care services, disability payments, lost wage payments, or any other benefits of any kind, including discounts and write-offs, provided to or on behalf of an injured party under a policy of insurance, contract, or benefit plan with an individual or group, whether or not provided through an employer.

(b) "Injured party" means a person who has sustained bodily injury as the result of the act or omission of a third party, has pursued a personal injury or similar claim against the third party or has made a claim under his or her uninsured or underinsured motorist coverage, and has received benefits as a policyholder, participant, or beneficiary from the payer of benefits. "Injured party" includes the personal representative of the estate of an injured party or the legal representative of a person under a disability as provided in article 81 of title 13, C.R.S.

(c) (I) "Payer of benefits" means any insurer, health maintenance organization, health benefit plan, preferred provider organization, employee benefit plan, other insurance policy or plan, or any other payer of benefits. "Payer of benefits" includes a fiduciary of an insurer, plan, or other payer of benefits.

(II) "Payer of benefits" does not include a program of medical assistance under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., or the children's basic health plan, as defined in article 8 of title 25.5, C.R.S.

(d) "Recovery" means recovery of a monetary award from a third party through either settlement or judgment to compensate an injured party for bodily injury sustained as a result of an act or omission of the third party. "Recovery" includes benefits paid or settlement of claims under uninsured or underinsured motorist coverage pursuant to section 10-4-609.

(3) (a) (I) Reimbursement or subrogation pursuant to a provision in an insurance policy, contract, or benefit plan is permitted only if the injured party has first been fully compensated for all damages arising out of the claim. Any provision in a policy, contract, or benefit plan allowing or requiring reimbursement or subrogation in circumstances in which the injured party has not been fully compensated is void as against public policy.

(II) This paragraph (a) does not limit the right of an insurer to seek reimbursement or subrogation to recover amounts paid for property damage or the right of an insurer providing uninsured or underinsured motorist coverage pursuant to section 10-4-609 to an injured party to pursue claims against an at-fault third party, and any amounts recovered by such insurer shall not be reduced pursuant to paragraph (c) of this subsection (3).



(b) If the injured party is fully compensated and reimbursement or subrogation of benefits is authorized, the reimbursement or subrogation amount cannot exceed the amount actually paid by the payer of benefits to cover benefits under the policy, contract, or benefit plan or, for health care services provided on a capitated basis, the amount equal to eighty percent of the usual and customary charge for the same services by health care providers that provide health care services on a noncapitated basis in the geographic region in which the services are rendered.

(c) The amount recoverable, if any, by the payer of benefits for reimbursement or subrogation shall be reduced by an amount equal to the payer of benefits' proportionate share of the attorney fees and expenses incurred by or on behalf of the injured party in making the recovery, based on the ratio of the amount of attorney fees and expenses incurred to the amount of the recovery.

(d) (I) If the injured party makes a recovery of an amount that is less than the total amount of coverage available under any third-party liability insurance policy or uninsured or underinsured motorist coverage pursuant to section 10-4-609, there is a rebuttable presumption that the injured party has been fully compensated. If the injured party makes a recovery of an amount equal to the total amount of coverage available under all third-party liability insurance policies and uninsured or underinsured motorist coverages, there is a rebuttable presumption that the injured party has not been fully compensated.

(II) If the injured party obtains a judgment, the amount of the judgment is presumed to be the amount necessary to fully compensate the injured party.

(4) (a) (I) Any disputes between the payer of benefits and the injured party regarding entitlement to reimbursement or subrogation shall be resolved in accordance with this paragraph (a), regardless of whether administrative remedies contained in the policy, contract, or benefit plan documents have been exhausted by the injured party.

(II) If the injured party obtains a recovery that is less than the sum of all damages incurred by the injured party and intends to enforce the requirements of subsection (3) of this section, the injured party shall notify the payer of benefits within sixty days of receipt of each recovery. The notice shall include the total amount and source of the recovery; the coverage limits applicable to any available insurance policy, contract, or benefit plan; and the amount of any costs charged to the injured party. If recovery was obtained through a settlement agreement that contains a confidentiality provision that affects the information required by this subparagraph (II), the confidentiality provision is unenforceable as to the disclosure of the required information.

(III) If the payer of benefits disputes that the injured party's recovery is less than the sum of all damages incurred by the injured party, the dispute shall be resolved by arbitration. The payer of benefits may request arbitration of the dispute to determine the extent to which the payer of benefits may be entitled to share in the recovery pursuant to subsection (3) of this section. The payer of benefits may request arbitration no later than sixty days after receipt of any notice under subparagraph (II) of this paragraph (a).

(IV) If the payer of benefits requests arbitration of the dispute, the injured party and the payer of benefits shall jointly choose an arbitrator to resolve the dispute. If the injured party and the payer of benefits cannot agree on an arbitrator, the dispute shall be resolved by a panel of three arbitrators selected as follows:

(A) The injured party shall select one arbitrator;

(B) The payer of benefits shall select one arbitrator; and

(C) The arbitrators chosen by the parties pursuant to sub-subparagraphs (A) and (B) of this subparagraph (IV) shall select the third arbitrator.

(b) If the arbitrator determines that the amount of the recovery does not fully compensate the injured party for his or her damages, the payer of benefits shall have no right to repayment, reimbursement, or subrogation.

(5) A payer of benefits shall not deny or refuse to provide any plan benefits otherwise available to an injured party because of the existence of a potential personal injury or similar claim or the resolution of a personal injury or similar claim.

(6) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), a payer of benefits shall not bring a direct action for subrogation or reimbursement of benefits against

a third party allegedly at fault for the injury to the injured party or an insurer providing uninsured motorist coverage.

(II) If an injured party has not pursued a claim against a third party allegedly at fault for the injured party's injuries by the date that is sixty days prior to the date on which the statute of limitations applicable to the claim expires, a payer of benefits may bring a direct action for subrogation or reimbursement of benefits against an at-fault third party. Nothing in this subparagraph (II) precludes an injured party from pursuing a claim against the at-fault third party after the payer of benefits brings a direct action pursuant to this subparagraph (II), and the payer of benefits' right to reimbursement or subrogation is limited by subsection (3) of this section.

(b) A third party shall not include a payer of benefits that is claiming repayment or reimbursement pursuant to subsection (3) of this section as a copayee on any check or draft in payment of a settlement with or judgment for or on behalf of the injured party.

(7) (a) A payer of benefits shall not delay, withhold, or otherwise reduce benefits:

(I) Because the obligation to pay benefits results from an act or omission for which a third party may be liable; or

(II) As a means of enforcing or attempting to enforce a claim for reimbursement or subrogation.

(b) Nothing in this subsection (7) prohibits the coordination of benefits between or among payers of benefits.

(8) When a payer of benefits obtains reimbursement of benefits paid in accordance with this section, the payer of benefits shall apply the amount of the reimbursement as a credit against any lifetime maximum benefit contained in the policy, plan, or contract under which the benefits were paid.

(9) Any language in an insurance policy, contract, or benefit plan that is contrary to this section is void and unenforceable. Although such language is unenforceable, nothing in this section requires an insurer to modify and refile with the commissioner, prior to the standard filing date, an insurance policy, contract, or benefit plan that contains language that is contrary to this section.

(10) Nothing in this section modifies:

(a) The requirement of section 13-21-111.6, C.R.S., regarding the reduction of damages based on amounts paid for the damages from a collateral source. The fact or amount of any collateral source payment or benefits shall not be admitted as evidence in any action against an alleged third-party tortfeasor or in an action to recover benefits under section 10-4-609.

(b) Lien rights of hospitals pursuant to section 38-27-101, C.R.S., or of the department of health care policy and financing pursuant to section 25.5-4-301 (5), C.R.S.; or

(c) Subrogation and lien rights granted to workers' compensation carriers or self-insured employers pursuant to section 8-41-203, C.R.S.

**Source:** L. 2010: Entire section added, (HB 10-1168), ch. 164, p. 575, § 1, effective August 11.

## ANNOTATION

**Law reviews.** For article, "CRS § 10-1-135 Colorado", see 40 Colo. Law. 41 (February 2011).

## PART 2

## EXAMINATIONS

**10-1-201. Legislative declaration.** The general assembly finds, determines, and declares that it is necessary to establish an effective and efficient system for examining the activities, operations, financial conditions, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the



commissioner. The provisions of this part 2 are intended to enable the commissioner to adopt a flexible system of examinations that directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

**Source: L. 2003:** Entire article RC&RE, p. 605, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-201 as it existed prior to 2002.

**10-1-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Company" means any person or group of persons engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to any administrative, regulatory, or taxing authority of the commissioner as well as any advisory organization or rating organization as defined in section 10-4-402.

(1.5) "Complaint" means a written or documented oral communication primarily expressing a grievance or an expression of dissatisfaction.

(1.7) "Desk examination" means an examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed in the offices of the division with the insurer providing requested documents by hard copy, microfiche, discs, or other electronic media for review.

(2) "Division" means the division of insurance.

(3) "Examination" means a formal financial examination or market conduct examination, as well as informal investigations conducted by the commissioner for the purpose of determining compliance with the law. Market conduct examinations may include routine, targeted, follow-up, multistate, or desk examinations.

(4) "Examiner" means any individual or firm authorized by the commissioner to conduct an examination under this part 2.

(5) "Insurance department" means the commissioner or other government official or agency of a state other than Colorado exercising powers and duties substantially equivalent to those of the commissioner or the division.

(6) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner or any equivalent insurance supervisory official of another state.

(7) "Market analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose risk to the insurance consumer.

(8) "Market conduct action" means any of the full range of activities that the commissioner may initiate to assess and address the market practices of insurers licensed to conduct business in this state, from market analysis to targeted, on-site examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for the purposes of this part 2.

(9) "Market conduct surveillance personnel" means those individuals employed by or under contract with the commissioner to collect, analyze, review, or act on information about the insurance marketplace that identifies patterns or practices of insurers.

(10) "NAIC" or "national association of insurance commissioners" means the organization of insurance regulators from the fifty states, the District of Columbia, and the four United States territories.

(11) "NAIC market analysis handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC and the process by which states can establish and implement market analysis programs, or its successor document.

(12) "NAIC market conduct examiner's handbook" means the set of guidelines developed and adopted by the NAIC that documents established practices to be used by



market conduct surveillance personnel in developing and executing an examination, or its successor document.

(13) “NAIC market conduct uniform examination procedures” means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination, or its successor document.

(14) “On-site examination” means an examination conducted at the insurer’s home, the insurer’s office, or the location where the records under review are stored.

(15) “Person” means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any agent or affiliate thereof.

(16) “Qualified contract examiner” means a person who is under contract with the commissioner and who is qualified by education, experience, and, where applicable, professional designations, to perform market conduct actions.

(17) “Standard data request” means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in an examination.

(18) “Targeted examination” means an examination, including, but not limited to, limited review and analysis conducted through a desk examination or on-site examination and in accordance with market conduct uniform examination procedures. The targeted examination shall be of a specific insurer’s conduct, practices, or risks identified through market analysis that have not been remedied by the insurer, including, but not limited to, underwriting and rating, marketing and sales, complaint-handling, operations and management, advertising materials, licensing, policyholder services, nonforfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted as a desk examination or as an on-site examination.

(19) “Third-party model or product” means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.

**Source:** L. 2003: Entire article RC&RE, p. 605, § 1, effective July 1. L. 2006: (1.5), (1.7), and (8) to (19) added and (7) amended, p. 960, § 3, effective January 1, 2007.

**Editor’s note:** This section is similar to former § 10-1-202 as it existed prior to 2002.

**Cross references:** For the legislative declaration contained in the 2006 act enacting subsections (1.5), (1.7), and (8) to (19) and amending subsection (7), see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-203. Authority, scope, and scheduling of examinations.** (1) The commissioner or the commissioner’s designee may conduct an examination or investigation of any company as often as the commissioner, in the commissioner’s sole discretion, deems appropriate but shall, at a minimum, conduct a formal financial examination of every insurer licensed in this state not less frequently than once every five years; except that this does not include eligible nonadmitted insurers regulated in accordance with article 5 of this title. In scheduling financial or market conduct examinations and in determining their nature, scope, and frequency, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners’ handbook adopted by the national association of insurance commissioners.

(2) For purposes of completing an examination of any company under this part 2, the commissioner may examine or investigate any person or the business of any person insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(3) In lieu of a financial examination under this part 2 of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company

as prepared by the insurance department for the company's state of domicile or port-of-entry state; except that such reports may only be accepted if:

(a) The insurance department was, at the time of the examination, accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(b) The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the examiners' insurance department.

**Source: L. 2003:** Entire article RC&RE, p. 606, § 1, effective July 1. **L. 2012:** (1) amended, (HB 12-1215), ch. 104, p. 354, § 7, effective August 8.

**Editor's note:** This section is similar to former § 10-1-203 as it existed prior to 2002.

### ANNOTATION

**Annotator's note.** Since § 10-1-203 is similar to § 10-1-203 as it existed prior to the 2002 repeal of article 1 of title 10, a relevant case construing that provision has been included in the annotations to this section.

**Public entity self-insurance pools such as the Colorado intergovernmental risk sharing agency are not to be construed to be insur-**

**ance companies and are not otherwise subject to state laws regulating insurance companies except that they are subject to this section and § 10-1-204 (1) to (5) and (10).** *City of Arvada v. Colo. Intergovernmental Risk Sharing Agency*, 988 P.2d 184 (Colo. App. 1999), *aff'd*, 19 P.3d 10 (Colo. 2001).

**10-1-204. Conduct of examinations.** (1) (a) In conducting the examination, the examiners shall observe those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the national association of insurance commissioners and the Colorado insurance examiners handbook. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) An examination under this article shall not be limited to an examination of the financial condition of a company but may, in the discretion of the commissioner, also include all other activities and affairs of the company.

(2) (a) Every company or person from whom information is sought and all officers, directors, and agents thereof shall provide to the examiners timely, convenient, and free access at reasonable hours at its offices to all books, records, accounts, papers, tapes, computer records, and other documents relating to the property, assets, business, and affairs of the company being examined. If the examination is an examination as defined in section 10-1-202 (3), such company or person shall make such books, records, and documents available for examination or inspection at the office location of the division when the commissioner determines that it is reasonably cost-effective to do so. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

(b) (I) The refusal of any company or any of its officers, directors, employees, or agents to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, denial, or nonrenewal of any license or authority held by the company and subject to the commissioner's jurisdiction.

(II) Proceedings for any suspension or revocation pursuant to this subsection (2) shall be conducted in accordance with section 10-1-110.

(3) The commissioner and all examiners shall have the power to issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction for an order, which shall be enforce-



able through contempt proceedings, compelling the person to appear and testify or produce documentary evidence. The commissioner may arrange for the services of an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the commissioner.

(4) Any person who knowingly or willfully testifies falsely in reference to any matter material to an investigation, examination, or inquiry is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

(5) Any person who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or papers of a company or upon any statement filed or offered to be filed in the division or used in the course of any examination, inquiry, or investigation, with the intent to deceive the commissioner or any person appointed by the commissioner to make such examination, inquiry, or investigation, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not less than two months nor more than twelve months, or by both such fine and imprisonment.

(6) (a) In addition to any other powers granted to the commissioner in this section or in any other provision of law, the commissioner may require any company, entity, or new applicant to be examined by independent examiners certified by the society of financial examiners or the insurance regulatory examiners society, actuaries who are members of the American academy of actuaries, or by any other qualified and competent loss reserve specialists, independent risk managers, independent certified public accountants, auditors, other examiners of insurance companies, or combination of such persons. Any domestic company may make a request to the commissioner to be so examined.

(b) The commissioner may accept, as part of any such examination, reports made by any person qualified and competent to conduct the examination as set forth in this subsection (6). No such person nor any member of such person's immediate family shall be officers of, connected with, or financially interested in the company, entity, or applicant being examined other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination or by any related investigation or hearing. Such persons shall keep strictly confidential all information, regardless of its source, obtained through any examination or about any examinee and shall disclose such information only to the commissioner or the examinee upon the specific request of either. The commissioner shall establish guidelines for assuring the neutrality of those persons to be authorized to supplement the examination procedures authorized in this section. The reasonable expenses and charges of persons so retained or designated shall be paid directly by the examinee to such persons. The examinee may contest the amount of fees, costs, and expenses charged to it by such persons by filing an objection with the commissioner which sets forth the charges that the examinee considers to be unreasonable and the basis for the claim that the charges are unreasonable. No amounts that are so disputed will be due to the examiner unless and until the commissioner has reviewed the objection and made a written finding that the disputed charges were reasonable in relation to the examination performed.

(7) Nothing contained in this part 2 shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(8) Nothing contained in this part 2 shall be construed to limit the commissioner's authority to use and, if appropriate, to make public, if consistent with section 10-3-414, any final or preliminary examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, deem appropriate.

(9) (a) The costs of financial examinations of foreign companies made outside the borders of this state and of executive or branch offices of domestic companies located outside the borders of this state shall be paid by the company examined and shall include



the expenses of the commissioner and the commissioner's assistants, who shall be paid the same compensation as other examiners on such examinations.

(b) The reasonable expenses of market conduct examinations shall be paid by the company examined, but shall not include the compensation of the commissioner and the commissioner's assistants.

(c) (I) There is a presumption that a market conduct examination of a domestic company shall be conducted by the commissioner or the commissioner's assistants unless the commissioner determines that good cause exists to have the examination conducted by a contract examiner.

(II) The commissioner shall develop rules for determining when contract market conduct examiners can be used. Such rules shall include, but shall not be limited to, such factors as out-of-state travel requirements, workload needs, special expertise required for the examination, and market issues requiring an unanticipated examination.

(d) When insurance companies not authorized to do business in this state, companies adjudged insolvent, or companies for any cause withdrawing from this state neglect, fail, or refuse to pay the reasonable charges for examination as approved by the commissioner, such charges shall be paid by the state treasurer from the general fund upon the order of the commissioner, and the amount so paid shall be a first lien upon all assets and property of such company and may be recovered by suit by the attorney general on behalf of the state of Colorado and restored to the general fund.

(10) The commissioner may also examine a company upon the request of five or more of the company's policyholders representing at least one hundred thousand dollars' worth of insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing, that such company is in an unsound or insolvent condition; but only the United States branches of companies incorporated in foreign countries shall be examined by the commissioner.

**Source:** L. 2003: Entire article RC&RE, p. 607, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-204 as it existed prior to 2002.

#### ANNOTATION

**Annotator's note.** Since § 10-1-204 is similar to § 10-1-204 as it existed prior to the 2002 repeal of article 1 of title 10, a relevant case construing that provision has been included in the annotations to this section.

**Public entity self-insurance pools such as the Colorado intergovernmental risk sharing agency are not to be construed to be insur-**

**ance companies and are not otherwise subject to state laws regulating insurance companies except that they are subject to subsections (1) to (5) and (10) of this section and § 10-1-203.** City of Arvada v. Colo. Intergovernmental Risk Sharing Agency, 988 P.2d 184 (Colo. App. 1999), aff'd, 19 P.3d 10 (Colo. 2001).

**10-1-205. Financial examination reports.** (1) The provisions of this section shall apply to financial examinations and market conduct examinations but shall not apply to informal investigations of consumer complaints except as otherwise provided in paragraph (b) of subsection (8) of this section. Examination reports shall comprise only facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted based upon the facts.

(2) No later than sixty days after completion of the examination, the examiner in charge shall file with the division a verified written report of examination under oath. Upon receipt of the verified report, the division shall transmit to the company examined both the report and a notice stating that the company examined shall be afforded a reasonable period not exceeding thirty days, within which to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty days after the end of the period allowed for the receipt of written

submissions or rebuttals, the commissioner shall fully consider and review the report, any written submissions or rebuttals, and any relevant portions of the examiner's work papers and shall enter an order that does one or more of the following:

(a) Adopts the examination report as filed or with specified modifications or corrections; and if the examination report reveals that the company is operating in violation of any law, rule, or prior lawful order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(b) Rejects the examination report and directs the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and to refile the report pursuant to subsection (1) of this section; or

(c) Calls for an investigatory hearing, upon no less than twenty days' notice to the company, for purposes of obtaining additional documentation, data, information, and testimony; or

(d) May impose a monetary penalty of not more than three thousand dollars for every act in violation of any law, rule, or prior lawful order of the commissioner described in the report of examination, but not to exceed an aggregate penalty of thirty thousand dollars unless the company knew or reasonably should have known that its conduct was in violation of any law, rule, or prior lawful order of the commissioner, in which case the penalty shall not be more than thirty thousand dollars for every act or violation, but not to exceed an aggregate penalty of seven hundred fifty thousand dollars annually.

(4) (a) All orders entered pursuant to paragraph (a) of subsection (3) of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final agency decision and shall be served upon the company by certified mail together with a copy of the adopted examination report. Review of such decision may be sought in the district court in and for the city and county of Denver and shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Within sixty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) Any hearing conducted under paragraph (c) of subsection (3) of this section by the commissioner or an authorized representative shall be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Such hearing shall not be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Within twenty days after the conclusion of any such hearing, the commissioner shall enter an order pursuant to paragraph (a) of subsection (3) of this section.

(c) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the company, or other persons. The documents produced shall be included in the record. Testimony taken by the commissioner or representative shall be under oath and preserved for the record.

(d) The hearing shall proceed with the commissioner or representative posing questions to the persons subpoenaed. Thereafter, the company and the division may present testimony relevant to the investigation. The company and the division shall be permitted to make closing statements and may be represented by counsel of their choice.

(e) Any order issued by the commissioner pursuant to paragraph (d) of subsection (3) of this section may be appealed directly to the court of appeals.

(5) Upon the adoption of the examination report pursuant to paragraph (a) of subsection (3) of this section, the commissioner shall continue, for at least thirty days, to hold the content of the examination report as private and confidential information except to the



extent provided in subsection (2) of this section. Thereafter, the commissioner may open the report for public inspection unless a court of competent jurisdiction has stayed its publication.

(6) No provision of this title shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto to the insurance division of this or any other state or country, or to law enforcement officials of this or any other state, or to any agency of the federal government at any time subject to the written agreement of the recipient to hold such information confidential and to treat it in a manner consistent with this part 2.

(7) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(8) **Confidentiality of ancillary information.** (a) All working papers, recorded information, documents, and copies thereof that are produced or obtained by or disclosed to the commissioner or any other person in the course of a financial or market conduct examination made under this part 2 shall be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person except to the extent provided in subsection (5) of this section; except that access to such materials may be granted to the national association of insurance commissioners. Disclosure of the said materials shall be made only upon the prior written agreement of the recipient to hold such information confidential as required by this section or upon the prior written consent of the company to which it pertains.

(b) When an informal investigation of a consumer complaint is conducted by the commissioner, all working papers, claim files, recorded information, and documents, and all copies thereof, that are produced or obtained by or disclosed to the commissioner or any other person in the course of an informal investigation shall be given confidential treatment until the informal investigation is concluded by the commissioner. After an informal investigation is concluded, the records shall no longer be considered confidential except as otherwise provided in article 72 of title 24, C.R.S., relating to public records.

**Source:** L. 2003: Entire article RC&RE, p. 610, § 1, effective July 1. L. 2004: IP(3) amended, p. 1058, § 2, effective July 1. L. 2008: (3)(d) amended, p. 2171, § 1, effective August 5.

**Editor's note:** This section is similar to former § 10-1-205 as it existed prior to 2002.

**10-1-206. Conflict of interest.** (1) No examiner may be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this part 2; except that this section shall not be construed to automatically preclude an examiner from being:

- (a) A policyholder or claimant under an insurance policy;
- (b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (c) An investment owner in shares of regulated diversified investment companies; or
- (d) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding any provision of this section to the contrary, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though such persons may from time to time be similarly employed or retained by persons subject to examination under this part 2.

**Source:** L. 2003: Entire article RC&RE, p. 612, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-1-206 as it existed prior to 2002.



**10-1-207. Immunity from liability - prohibited activity.** (1) No cause of action shall arise, nor shall any liability be imposed, against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this part 2.

(2) No cause of action shall arise, nor shall any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this part 2, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not abrogate or modify in any way any common-law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section shall be entitled to an award of attorney fees and costs if such person is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this part 2 and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(5) An insurer shall not take any retaliatory personnel action against an employee because the employee provides information to or testifies before the commissioner conducting a market conduct investigation into the practices of the insurer.

(6) (a) An employee who has been the subject of a retaliatory personnel action in violation of subsection (5) of this section may institute a civil action in a court of competent jurisdiction for relief within one year after the date of the alleged retaliatory action.

(b) A court of competent jurisdiction may order relief as follows:

(I) Reinstatement of the employee to the same position held before the retaliatory personnel action or an equivalent position;

(II) Reinstatement of full benefits and seniority rights; and

(III) Compensation for lost wages and benefits.

(c) Upon a determination that an insurer has taken a retaliatory personnel action, the court may award costs of the action together with reasonable attorney fees.

**Source:** L. 2003: Entire article RC&RE, p. 613, § 1, effective July 1. L. 2006: (5) and (6) added, p. 971, § 5, effective January 1, 2007.

**Editor's note:** This section is similar to former § 10-1-207 as it existed prior to 2002.

**Cross references:** For the legislative declaration contained in the 2006 act enacting subsections (5) and (6), see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-208. Informal investigations.** (1) The commissioner may contract pursuant to section 24-50-504 (2) (c) and (2) (e), C.R.S., with a person, corporation, or entity having technical or subject matter expertise or skill and experience in investigative techniques to assist the division in performing informal investigations of an insurer or producer pursuant to this part 2 when the commissioner determines that the division is without sufficient technical expertise to perform such investigation. Informal investigations conducted pursuant to this section shall not include formal financial examinations or market conduct examinations. The commissioner shall, by rule, establish when contract investigators may be used for informal investigations. The rules shall include, but not be limited to, out-of-state travel requirements, special expertise required for the investigation, and a significant pattern of complaints or a well documented allegation against a carrier that warrants an informal investigation.

(2) The reasonable expenses and charges of persons so retained or designated for informal investigations of an insurer or a producer pursuant to subsection (1) of this section may be paid directly by the examinee to such persons as determined by the commissioner. The examinee may contest the amount of fees, costs, and expenses charged to it by such

persons by filing an objection with the commissioner, which sets forth the charges that the examinee considers to be unreasonable and the basis for the claim that the charges are unreasonable. No amounts that are so disputed will be due to the examiner unless and until the commissioner has reviewed the objection and made a written finding that the disputed charges were reasonable in relation to the investigation performed.

**Source: L. 2004:** Entire section added, p. 72, § 1, effective March 8.

**10-1-209. Short title.** Sections 10-1-209 to 10-1-218 shall be known and may be cited as the “Market Conduct Surveillance Act”.

**Source: L. 2006:** Entire section added, p. 962, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-210. Market analysis procedures.** (1) (a) The commissioner is responsible for conducting market conduct examinations for Colorado policyholder protection, which shall be accomplished by examinations of domestic insurers and foreign insurers as deemed necessary by the commissioner. If the insurer to be examined is part of an insurance holding company system, the commissioner may also simultaneously examine any affiliate of the insurer that is authorized to write insurance in this state if the affiliated insurer writes business for Colorado policyholders.

(b) The commissioner may delegate responsibility for conducting an examination of a domestic insurer, foreign insurer, or an affiliate of an insurer, as described in paragraph (a) of this subsection (1), to the insurance commissioner of another state if that insurance commissioner agrees to accept the delegated responsibility for the examination. If the commissioner elects to delegate responsibility for examining an insurer, the commissioner shall accept a market conduct examination report prepared by the insurance commissioner to whom the responsibility has been delegated if the commissioner determines that:

(I) The laws of the examining state that are applicable to the subject of the examination are substantially similar to those of this state;

(II) The examining state has a market conduct surveillance system that is comparable to the market conduct surveillance system required by this part 2 at the time the commissioner is evaluating whether to examine the insurer; and

(III) The examination from the other state’s commissioner has been conducted within the past five years.

(c) If the insurance commissioner to whom the examination responsibility was delegated pursuant to paragraph (b) of this subsection (1) did not evaluate the specific area or issue of concern to the commissioner or a specific requirement of Colorado law, the commissioner may pursue a targeted examination or market analysis of the unexamined area pursuant to this part 2.

(d) Subject to the determination under paragraph (b) of this subsection (1) if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall accept appropriately detailed documentation that the insurer has made a similar modification in this state in lieu of initiating a market conduct action or examination on the practice or procedure. The commissioner may require other or additional practice or procedure modifications.

(e) The commissioner shall review his or her delegations of examination responsibility made pursuant to paragraph (b) of this subsection (1) at least annually.

(2) (a) The commissioner shall gather information from data currently available to the division, required reporting requirements, information collected by the NAIC, and information from a variety of other sources in both the public and private sectors.

(b) The commissioner shall analyze the information collected pursuant to paragraph (a) of this subsection (2) in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm



or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC market analysis handbook as one resource in performing this analysis.

(3) (a) If the commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market conduct actions may be considered prior to conducting a targeted, on-site market conduct examination. The market conduct action selected shall be made known to the insurer in writing if the market conduct action involves insurer participation or response. These market conduct actions may include, but are not limited to:

- (I) Desk examinations;
- (II) Correspondence with the insurer;
- (III) Insurer interviews;
- (IV) Information gathering;
- (V) Policy and procedure reviews;
- (VI) Interrogatories;
- (VII) Review of insurer self-evaluation, if the self-evaluation is not subject to a privilege of confidentiality; and

(VIII) Compliance programs, including membership in a best-practice organization.

(b) The commissioner shall select a market conduct action that is cost-effective for the division and the insurer while still protecting the insurance consumer.

(c) (I) The commissioner shall take those steps reasonably necessary to eliminate requests for information that duplicate or conflict with information provided as part of an insurer's financial statement, the annual market conduct statement of the NAIC, or other required schedules, surveys, or reports that are submitted regularly to the commissioner or with data requests made by other states if that information is available to the commissioner, unless the information is state specific.

(II) To the extent practicable, the commissioner shall coordinate with market conduct actions and findings of this state and those of other states.

**Source: L. 2006:** Entire section added, p. 962, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-211. Protocols for market conduct actions.** (1) Each market conduct action taken as a result of a market analysis shall:

(a) Focus on the general business practices and compliance activities of insurers rather than initiating market conduct actions in response to clearly infrequent or unintentional random errors that do not cause significant consumer harm; and

(b) Not result in a market conduct examination unless it is determined that any examination is beyond the scope of the examination conducted in the insurer's state of domicile on the specific area of concern within the past five years.

(2) (a) The commissioner is authorized to determine the frequency and timing of market conduct actions taken as a result of a market analysis. The timing shall depend upon the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

(b) If the commissioner has information that more than one insurer is engaged in common practices that may violate statute or rule, the commissioner may schedule and coordinate simultaneous examinations.

(3) The commissioner shall provide the insurer the opportunity to resolve, to the satisfaction of the commissioner, any dispute regarding any insurer-specific information that is used or relied upon by the commissioner when identifying insurer practices for further review before the initiation of or concurrently with a market conduct action that requires the insurer to provide additional information. The commissioner shall not require an insurer to provide additional information to market conduct surveillance personnel in a manner that is inconsistent with existing law, that is outside the ordinary course of business, or that cannot be created at reasonable expense or effort.



(4) For any change made by the commissioner to an NAIC work product referenced in this part 2 that materially changes the way in which market conduct actions are conducted, the commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to article 4 of title 24, C.R.S. If a hearing is not requested, the commissioner shall use the changes as applied to the versions of the work product most recently developed and adopted by the NAIC. For purposes of this subsection (4), a “material change” is a change that would require a change to a statute or rule.

(5) Except as otherwise provided by law, every insurer or person from whom information is sought, as well as its officers, directors, and agents, shall provide the commissioner convenient and free access to all books, records, accounts, papers, documents, and computer or other recordings, relating to the property, assets, business, and affairs of the insurer during regular business hours. The officers, directors, employees, insurance producers, and agents of the insurer or person shall facilitate market conduct actions and aid in market conduct actions to the extent possible.

(6) Subject to section 16-4-108 (1) (c) and (1.5), C.R.S., a bail premium is earned in its entirety by a compensated surety upon the defendant’s release from custody.

**Source: L. 2006:** Entire section added, p. 964, § 4, effective January 1, 2007. **L. 2012:** (6) added, (HB 12-1266), ch. 280, p. 1494, § 7, effective July 1.

**Editor’s note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsection (6) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-212. Targeted, on-site market conduct examinations - rules.** (1) When the commissioner determines that other market conduct actions identified in section 10-1-210 (3) (a) are not appropriate, the commissioner has the discretion to conduct targeted, on-site market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market conduct examiner’s handbook.

(2) For a foreign insurer authorized under this title to do business in this state, the commissioner shall coordinate an examination with the insurance commissioner of the insurer’s state of domicile to the extent practicable.

(3) (a) Prior to commencement of a targeted, on-site market conduct examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:

- (I) The name and address of the insurer being examined;
- (II) The name and contact information of the examiner-in-charge;
- (III) The justification for the examination;
- (IV) The scope of the examination;
- (V) The date the examination is scheduled to begin;
- (VI) Notice of any nondivision personnel who will assist in the examination;
- (VII) A time estimate for the duration of the examination;
- (VIII) A budget for the examination; and
- (IX) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer.

(b) To the extent feasible, market conduct examinations shall utilize desk examinations and data requests prior to a targeted, on-site market conduct examination.

(c) The division shall use the NAIC standard data request or a successor product adopted by rule promulgated by the commissioner that is substantially similar to the NAIC standard data request.

(4) (a) The commissioner shall send an announcement of the targeted, on-site market conduct examination to the insurer and simultaneously shall post notice that a market conduct examination has been scheduled on the NAIC’s examination tracking system or successor NAIC product, as determined by the commissioner, as soon as possible but no

later than sixty days before the estimated start of the on-site examination. The time limitation specified in this subsection (4) shall not apply where the examination is conducted in response to extraordinary circumstances as described in section 10-1-211 (2) (a). The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

(b) If a targeted, on-site market conduct examination is expanded beyond the reasons provided to the insurer in the notice of the examination required pursuant to this subsection (4):

(I) The commissioner shall provide written notice to the insurer explaining the extent of and reasons for the expansion; and

(II) The market conduct surveillance personnel shall provide a revised work plan to the insurer as soon as practicable.

(5) Except as provided in section 10-1-211 (2) (a), at least thirty days prior to the start of the targeted, on-site market conduct examination, the commissioner shall offer to conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations.

(6) Prior to the conclusion of a targeted, on-site market conduct examination, the individual among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

(7) (a) The commissioner shall adhere to the following time line, unless a mutual agreement is reached with the insurer to modify the time line:

(I) The commissioner shall deliver the draft report to the insurer within sixty days after the completion of the targeted, on-site market conduct examination. Completion of the examination shall be defined as the date the commissioner confirms in writing that the examination is completed.

(II) The insurer shall respond with written comments within thirty days after receipt of the draft report.

(III) The division shall make a good faith effort to resolve issues informally and prepare a final report within thirty days after receipt of the insurer's written comments unless a mutual agreement is reached to extend the deadline. The commissioner may make corrections and other changes, as appropriate.

(IV) Within thirty days after receipt of the final report, the insurer shall accept the findings of the final report or request a hearing. If agreed to by the commissioner and the insurer, the insurer shall be allowed an additional thirty days to respond to the final report. A hearing request shall be made in writing and shall follow the requirements of article 4 of title 24, C.R.S.

(b) The commissioner shall make the insurer's response to an examination available upon request. The insurer is not obligated to submit a response. Individuals involved in the targeted, on-site market conduct examination shall not be named in either the report or the response except to acknowledge their involvement.

(8) (a) Except as provided for in paragraph (b) of this subsection (8), upon adoption of the final report pursuant to subsection (7) of this section, the commissioner shall continue to hold the content of the report as private and confidential for a period of thirty days. After the thirty-day period expires, the commissioner shall open the report for public inspection if no court of competent jurisdiction has stayed its publication.

(b) Nothing contained in this part 2 shall prevent or be construed to prevent the commissioner from disclosing the content of an examination report, preliminary examination report, or results, or any matter relating to a report or results, to the division or to the insurance division of any other state or agency or office of the federal government at any time if the division, agency, or office receiving the report or related matters agrees and has the legal authority to hold it confidential in a manner consistent with this part 2.

(9) (a) Where the reasonable and necessary cost of a market conduct examination is to be assessed by fee against the insurer under examination, the fee shall be consistent with the NAIC market conduct examiner's handbook. The fee shall be itemized and shall include receipts for all applicable expenses, and bills shall be provided to the insurer on at least a monthly basis for review prior to submission for payment. Payment of fees shall be made at least monthly.



(b) The commissioner shall maintain active management and oversight of examination costs, including costs associated with the commissioner's own examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the commissioner retains outside assistance, the commissioner shall have written protocols that:

(I) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees pursuant to section 10-1-204 (6) (b); and

(II) Require disclosure of the terms of the contracts with the outside consultants that will be used, including the fees and hourly rates that can be charged.

(c) An insurer shall not be required to reimburse any portion of examiner fees under this subsection (9) incurred by market conduct surveillance personnel or qualified contract examiners that exceed the fees prescribed in the NAIC market conduct examiner's handbook and any successor documents to that handbook, unless the commissioner demonstrates that the fees prescribed in the handbook are inadequate under the circumstances of the examination.

(d) An insurer may request an independent audit of the examination fees charged by a contract examiner at any time within twelve months after the completion of the market conduct examination. The insurer shall be responsible for the cost of the independent audit. The contract examiner shall maintain documentation supporting his or her expenses charged to the insurer for at least twelve months after the completion of the market conduct examination.

**Source: L. 2006:** Entire section added, p. 965, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-213. Confidentiality requirements.** (1) (a) Except as otherwise provided by law and to the extent practicable, market conduct surveillance personnel shall have free and full access to the following documents of and persons associated with the insurer during regular business hours:

(I) Books;

(II) Records, including, but not limited to, any self-audit documents;

(III) Employees;

(IV) Officers; and

(V) Directors.

(b) Upon request of market conduct surveillance personnel, an insurer utilizing a third-party model or product for any of the activities being reviewed shall make the details of the models or products available to the personnel.

(c) All documents, including, but not limited to, working papers, self-audit documents, third-party models or products, complaint logs, and copies of any documents created, produced, obtained by, or disclosed to the commissioner or any other person in the course of a market conduct action taken pursuant to this part 2 or a market analysis conducted by the commissioner of the market conditions of an insurer or all documents obtained by the NAIC as a result of any of the provisions of this part 2 shall be given confidential treatment by the commissioner, the division, and market conduct surveillance personnel, shall not be subject to subpoena, and shall not be made public by the commissioner or any other person except as provided in section 10-1-212 (8). Self-audit documents voluntarily disclosed to the commissioner or other person by an insurer, other than in the course of a market conduct action or market analysis, shall be given confidential treatment by the commissioner, the division, and market conduct surveillance personnel, shall not be subject to subpoena, and shall not be made public by the commissioner or any other person except as provided in section 10-1-212 (8).

(2) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, communications, or information shall not occur as a result of disclosure to the commissioner under this section.



(3) Market conduct surveillance personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when the commissioner orders such action pursuant to this part 2.

(4) Notwithstanding subsection (1) of this section, in order to assist in the performance of the commissioner's duties, the commissioner may:

(a) Share documents, materials, communications, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies and law enforcement authorities and the NAIC, its affiliates, and subsidiaries, if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(b) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, communication, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, communication, or information; and

(c) Enter into agreements governing the sharing and use of information consistent with this section.

(5) Notwithstanding the confidentiality requirements in paragraph (c) of subsection (1) of this section, when the commissioner requests an insurer to conduct a self-audit or engages in other market conduct action that does not rise to the level of an examination, the commissioner may make the final results of the self-audit or other market conduct action, in an aggregated format, available for public inspection in a manner deemed appropriate by the commissioner.

**Source:** L. 2006: Entire section added, p. 968, § 4, effective January 1, 2007. L. 2010: (5) added, (HB 10-1220), ch. 197, p. 852, § 8, effective July 1.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-214. Market conduct surveillance personnel.** (1) Market conduct surveillance personnel shall be qualified by education, experience, and, where applicable, professional designations. The commissioner may supplement the in-house market conduct surveillance staff with qualified outside professional assistance if the commissioner determines that outside assistance is necessary.

(2) Market conduct surveillance personnel have a direct or indirect conflict of interest if they are affiliated with the management of, have been employed by, or own a pecuniary interest in the insurer subject to an examination under this part 2 within the most recent five years prior to the use of the personnel. This section shall not be construed to automatically preclude an individual from being:

- (a) A policyholder or claimant under an insurance policy;
- (b) A grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;
- (c) An investment owner in shares of regulated diversified investment companies; or
- (d) A settlor or beneficiary of a blind trust into which any otherwise permissible holdings have been placed.

**Source:** L. 2006: Entire section added, p. 970, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-215. Fines and penalties.** (1) Fines and penalties levied as a result of a market conduct action or other action enforcing this part 2 shall be consistent, reasonable, and justified.

(2) The commissioner:

(a) Shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the marketplace and the extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and remediate problems detected; and

(b) May include the considerations specified in paragraph (a) of this subsection (2) in determining the appropriate fines levied in accordance with subsection (1) of this section.

**Source: L. 2006:** Entire section added, p. 970, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-216. Participation in national market conduct databases.** (1) The commissioner shall collect and report market data to the NAIC's market information systems, including the complaint database system, the examination tracking system, and the regulatory information retrieval system, or other successor NAIC products as determined by the commissioner.

(2) Complaints reported to the NAIC complaint database system, or its successor product, shall be reported in accordance with NAIC guidelines. However, before publication of insurer-specific complaint information by the division, insurance industry personnel shall be given the opportunity to review Colorado-specific complaints assigned to their company in the division's complaints database and request that corrections be made to the data. The division shall review insurer objections to assigned complaints before publishing insurer-specific complaints information and shall make corrections to the divisions' complaints database when appropriate. If the division makes corrections to its complaints database based on errors identified by an insurer, the corrected data shall be sent to the NAIC complaint database system, or its successor product. The division shall ensure that insurers have until at least January 31 to review complaints data for the immediately preceding calendar year. In order for an insurer's objections to its complaints data information to be considered, the insurer shall review and request any corrections to the prior calendar year's complaints data no later than January 31.

(3) Information collected and maintained by the division shall be compiled in a manner that meets the requirements of the NAIC.

**Source: L. 2006:** Entire section added, p. 970, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-217. Coordination with other states through NAIC.** The commissioner shall share information and coordinate the division's market analysis and examination efforts with other states through the NAIC.

**Source: L. 2006:** Entire section added, p. 971, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

**10-1-218. Additional duties of commissioner.** (1) At least once a year and more frequently if deemed necessary, the commissioner shall make available to insurers and other entities subject to this title information on new laws and rules, enforcement actions, and other information the commissioner deems pertinent to ensure compliance with market conduct requirements. The commissioner shall determine an appropriate manner in which to provide the information to insurers. The failure of the commissioner to provide any such



information shall not be a defense for any insurer that fails to comply with an insurance law or rule of this state.

(2) (a) The commissioner shall designate a specific person or persons within the division whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws or rules by insurers. The designated person or persons shall be provided with proper training on the handling of the information, including procedures to maintain the confidentiality of the communication for purposes of this section.

(b) The information received pursuant to this subsection (2) is a confidential communication and is not public information.

**Source:** L. 2006: Entire section added, p. 971, § 4, effective January 1, 2007.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 2006.

LICENSES

ARTICLE 2

Licenses

**Editor’s note:** (1) This article was numbered as articles 1 and 32 of chapter 72, C.R.S. 1963. Part 2 of this article was repealed and reenacted in 1977 and the substantive provisions of this article were repealed and reenacted in 1993, effective January 1, 1995, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers, prior to 1993, are shown in editor’s notes following those sections that were relocated.

(2) The effective date and applicability for this article are contained in § 10-2-1101.

**Cross references:** For an alternative disciplinary action that may be imposed upon persons licensed pursuant to this article, see § 24-34-106.

PART 1		PART 3	
GENERAL PROVISIONS		CONTINUING EDUCATION	
10-2-101.	Short title.	10-2-301.	Continuing education requirement - advisory committee.
10-2-102.	Scope - applicability.	PART 4	
10-2-103.	Definitions.	LICENSING AND APPOINTMENT OF INSURANCE PRODUCERS	
10-2-104.	Authority of commissioner - rules.	10-2-401.	License required.
10-2-105.	Insurance producer - exemption from definition.	10-2-402.	License examination requirement.
PART 2		10-2-403.	Exemption from license examination.
PRELICENSURE EDUCATION		10-2-404.	Application for license.
10-2-201.	Prelicensure education - when required.	10-2-405.	Residency - individuals - agencies.
10-2-202.	Exemption from prelicensure education requirements.	10-2-406.	Licensing of agencies.
10-2-203.	Course certification, registration, and review by commissioner.	10-2-407.	License - definitions of lines of insurance - authority.
		10-2-408.	License - contents - continuation due date.



10-2-409.	License - amendment - reissuance.
10-2-410.	Temporary licensing.
10-2-411.	Duplicate license.
10-2-412.	Change of address - notification.
10-2-413.	Fees.
10-2-414.	Additional lines of authority - application for license.
10-2-415.	Appointment of insurance producer by insurer - continuation - exceptions. (Repealed)
10-2-415.5.	Appointment of insurance producer - continuation - renewal - exceptions.
10-2-415.6.	Bail bond reports required - repeal.
10-2-415.7.	Termination of insurance producer bail bonding agent - notice - penalty.
10-2-416.	Notification to the commissioner of termination.
10-2-416.5.	Required availability to commissioner of list of producer appointees for enforcement purposes.
10-2-417.	Public insurance adjuster - license required.
10-2-418.	Bail bonding authority.

## PART 5

## NONRESIDENT LICENSES

10-2-501.	Reciprocity.
10-2-502.	Nonresident licensing - qualification.
10-2-503.	Commissioner as agent for service of process.

## PART 6

## BANKS AND BANK HOLDING COMPANIES

10-2-601.	Financial institutions may sell insurance - where - regulation.
10-2-602.	Sale of annuities and insurance by financial institutions - certain tying arrangements prohibited.
10-2-603.	Bank sale of annuities - disclosure requirements.
10-2-604.	Disclosures.
10-2-605.	Misleading advertising.
10-2-606.	Discrimination against affiliated agents.
10-2-607.	Location of sales.

## PART 7

## BUSINESS CONDUCT OF LICENSEES

10-2-701.	Assumed names - registration - rules.
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10-2-702.	Commissions.
10-2-703.	Countersignature not required. (Repealed)
10-2-704.	Fiduciary responsibilities.
10-2-705.	Bail bond documents - requirements - rules.
10-2-706.	Insurance producer designee - responsibility.
10-2-707.	Business practices - price limits - collateral.

## PART 8

## DISCIPLINARY ACTIONS

10-2-801.	Licenses - denial, suspension, revocation, termination - reporting of actions - definitions.
10-2-802.	Surrender of license.
10-2-803.	Notice of penalty, suspension, termination, revocation, or denial.
10-2-804.	Investigation by commissioner.

## PART 9

## REINSURANCE INTERMEDIARY MODEL ACT

10-2-901.	Short title.
10-2-902.	Definitions.
10-2-903.	Licensure.
10-2-904.	Required contract provisions - reinsurance intermediary — producers.
10-2-905.	Books and records - reinsurance intermediary — producers.
10-2-906.	Duties of insurers utilizing the services of a reinsurance intermediary — producer.
10-2-907.	Required contract provisions - reinsurance intermediary — managers.
10-2-908.	Prohibited acts.
10-2-909.	Duties of reinsurers utilizing the services of a reinsurance intermediary — manager.
10-2-910.	Examination authority.
10-2-911.	Penalties and liabilities.
10-2-912.	Rules and regulations.

## PART 10

## MANAGING GENERAL AGENTS ACT

10-2-1001.	Short title.
10-2-1002.	Definitions.
10-2-1003.	Licensure.

10-2-1004.	Required contract provisions.	PART 11
10-2-1005.	Duties of insurers.	
10-2-1006.	Examination authority.	EFFECTIVE DATE - APPLICABILITY
10-2-1007.	Penalties and liabilities.	
10-2-1008.	Rules and regulations.	10-2-1101. Effective date - applicability.

## PART 1

## GENERAL PROVISIONS

**10-2-101. Short title.** This article shall be known and may be cited as the “Colorado Producer Licensing Model Act”.

**Source:** L. 93: Entire article R&RE, p. 1348, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1190, § 1, effective January 1, 2002.

**10-2-102. Scope - applicability.** This article governs the qualifications and procedures for the licensing of insurance producers. This article is intended to simplify and organize some statutory language to improve efficiency, permit the use of new technology, and reduce costs associated with issuing, continuing, and renewing insurance licenses.

**Source:** L. 93: Entire article R&RE, p. 1348, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1190, § 2, effective January 1, 2002.

**Editor’s note:** This section is similar to former § 10-2-201 as it existed prior to 1993.

**10-2-103. Definitions.** As used in this article, unless the context otherwise requires:

- (1) “Commissioner” means the commissioner of insurance.
- (2) “Health coverage” means accident and health or sickness and accident policies or contracts including other health coverages provided by insurers, health maintenance organizations, or nonprofit hospital and surgical plans.
- (2.5) “Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer meets the following:
  - (a) Maintains the producer’s principal place of residence or principal place of business; and
  - (b) Is licensed to act as an insurance producer.
- (3) “Individual” means any private or natural person as distinguished from a partnership, corporation, association, or any foreign or domestic entity as defined in section 7-90-102, C.R.S.
- (4) “Insurance” means any of the lines of authority set forth in section 10-2-407 (1).
- (5) “Insurance agency” or “business entity” means a corporation, partnership, association, or foreign or domestic entity as defined in section 7-90-102, C.R.S., or other legal entity that transacts the business of insurance.
- (6) “Insurance producer” or “producer”, except as otherwise provided in section 10-2-105, means a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:
  - (a) Policies of insurance for risks residing, located, or to be performed in this state;
  - (b) Membership in a prepayment plan as defined in parts 2 and 3 of article 16 of this title; or
  - (c) Membership enrollment in a health care plan as defined in part 4 of article 16 of this title.
- (6.5) “Insurer” means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.
- (7) “License” means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority, specified in such document. The

license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier to a binding agreement.

(7.1) “Limited line insurance” means those lines of authority other than those defined in section 10-2-407 (1) (a) to (1) (e) or any other line of insurance that the commissioner may deem necessary to recognize for the purpose of complying with section 10-2-502.

(7.3) “Limited line producer” means a person authorized by the commissioner to sell, solicit, or negotiate limited lines of insurance.

(7.5) “Limited lines credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the insured credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(7.7) “Limited lines credit insurance producer” means a person who sells, solicits, or negotiates one or more forms of limited lines credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(7.9) “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(8) “Person” includes any individual or a business entity.

(9) (Deleted by amendment, L. 2001, p. 1190, § 3, effective January 1, 2002.)

(10) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(11) “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(12) “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

(13) “Uniform business entity application” means the current version of the national association of insurance commissioners’ uniform business entity application for resident and nonresident business entities.

(14) “Uniform application” means the current version of the national association of insurance commissioners’ uniform application for resident and nonresident producer licensing.

**Source:** L. 93: Entire article R&RE, p. 1348, § 1, effective January 1, 1995. L. 2001: (2.5), (6.5), (7.1), (7.3), (7.5), (7.7), (7.9), (10), (11), (12), (13), and (14) added and (3), (4), (5), (7), (8), and (9) amended, p. 1190, § 3, effective January 1, 2002. L. 2009: (7.1), (7.3), (7.5), and (7.7) amended, (SB 09-292), ch. 369, p. 1940, § 10, effective August 5.

**Editor’s note:** This section is similar to former §§ 10-2-102 and 10-2-202 as they existed prior to 1993.

**10-2-104. Authority of commissioner - rules.** Pursuant to the provisions of article 4 of title 24, C.R.S., the commissioner may promulgate reasonable rules for the implementation and administration of the provisions of this article. The commissioner may contract with any party for the purpose of performing any ministerial duty required of the commissioner under this article. All reasonable charges and expenses of such contractors shall be paid directly to the contractors by licensees.

**Source:** L. 93: Entire article R&RE, p. 1349, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1192, § 4, effective January 1, 2002.

**Editor’s note:** This section is similar to former § 10-2-220 as it existed prior to 1993.

**10-2-105. Insurance producer - exemption from definition.** (1) Nothing in this article shall be construed to require an insurer to obtain an insurance producer license. In



this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(2) Notwithstanding section 10-2-103 (6), “insurance producer” does not include the following:

(a) Any person who is a regularly salaried officer, director, or employee of an insurance company or an insurance producer and who is engaged in the performance of usual or customary executive, administrative, or clerical duties which do not include the negotiation or solicitation of insurance, so long as the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state;

(b) Any person who is a salaried employee in the office of an insurance producer or insurer and who devotes full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of such person’s employer, so long as the person does not receive any commission on such applications and the person’s compensation is not varied by the volume of applications or premiums taken or received;

(c) An officer, director, or employee whose activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(c.3) An officer, director, or employee whose function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance;

(c.5) An officer, director, or employee who is acting in the capacity of a special agent or agency supervisor assisting insurance producers, where the officer’s, director’s, or employee’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;

(c.7) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance or for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans or performs administrative services related to mass marketed property and casualty insurance, where no commission is paid to the person for the service;

(d) Employers, associations, or their officers, directors, or employees, or the trustees of any employee trust plan, to the extent that such employers, associations, officers, directors, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates, which program involves the use of insurance issued by an insurer; except that such employers, associations, officers, directors, employees, or trustees shall not in any manner be compensated, directly or indirectly, by the company issuing the contracts;

(e) Employees of insurers or insurance agencies or organizations employed by insurers or insurance agencies who are engaging in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who are not individually engaged in the solicitation or negotiation of policies or contracts for insurance;

(f) Management associations, partnerships, or corporations whose operations do not entail solicitation of insurance from the public;

(g) Officers or employees of a motor vehicle rental company that offers coverage in connection with and incidental to the rental of motor vehicles under motor vehicle rental agreements, so long as such coverage is:

(I) Offered at the point of the rental transaction or by preselection of coverage in master, corporate, group, or individual rental agreements;

(II) Limited in scope to the parties to such motor vehicle rental agreements and to other authorized drivers or occupants of the vehicles being rented;

(III) Limited in duration to coverage of damages incurred as a result of events occurring during the rental period; and

(IV) For traditionally recognized risks associated with motor vehicle operation and travel, including, without limitation, personal injury or death, personal liability and property

damage, collision, damage to or loss of personal effects, roadside assistance, and emergency repairs;

(h) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, so long as the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(i) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance, for commercial property and casualty risks, to an insured with risks located in more than one state insured under that contract, so long as the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(j) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, so long as the employee does not sell or solicit insurance or receive a commission.

**Source:** L. 93: Entire article R&RE, p. 1350, § 1, effective January 1, 1995. L. 98: (1)(g) added, p. 234, § 3, effective April 10. L. 2001: Entire section amended, p. 1192, § 5, effective January 1, 2002.

**Editor's note:** This section is similar to former § 10-2-209 as it existed prior to 1993.

**Cross references:** For the legislative declaration contained in the 1998 act enacting subsection (1)(g), see section 1 of chapter 88, Session Laws of Colorado 1998.

## PART 2

### PRELICENSURE EDUCATION

**10-2-201. Prelicensure education - when required.** (1) (a) Except as otherwise provided in section 10-2-202, in addition to other requirements for licensure as specified under this article and as a condition of initial licensure, an individual applicant for qualification in life, sickness and accident, or property and casualty lines shall be required to provide evidence to the commissioner that the individual applicant has satisfactorily completed an approved prelicensure education or training course or program as follows:

(I) An individual seeking insurance producer licensure authority for life insurance shall complete at least fifty hours of an approved course or program for certification in life insurance; and, of the said fifty hours, at least three hours shall pertain specifically to insurance industry ethics;

(II) An individual seeking insurance producer licensure authority for health coverage shall complete at least fifty hours of an approved course or program for certification in sickness and accident insurance; and, of the said fifty hours, at least three hours shall pertain specifically to insurance industry ethics;

(III) An individual seeking insurance producer licensure authority for property or casualty insurance or both shall complete at least fifty hours of an approved course or program for certification in property or casualty insurance or both; and, of the said fifty hours, at least three hours shall pertain specifically to insurance industry ethics.

(b) An individual seeking an insurance producer license to include life, sickness and accident, property, or casualty lines or any combination thereof shall not be eligible to take the written examination provided for in section 10-2-402 until the prelicensure education requirements specified in this subsection (1) pertaining to the line or lines of insurance applied for have been satisfied.

(2) The commissioner shall adopt all rules necessary to carry out the prelicensing education provisions of this section. Such rules shall set forth standards for courses and



programs to qualify for approval by the commissioner and shall also prescribe a system of control and reporting.

(3) An individual seeking an insurance producer license shall pay to the commissioner, in addition to any other applicable fees or charges, a fee established by the commissioner in accordance with section 10-2-413 for operation of the preclicensing education program.

**Source:** L. 93: Entire article R&RE, p. 1350, § 1, effective January 1, 1995.

**10-2-202. Exemption from preclicensure education requirements.** (1) Preclicensure education as set forth in section 10-2-201 shall not be required of an individual who is:

(a) Applying to reinstate a cancelled or expired resident insurance producer license in this state when such license has been inactive for one year or less;

(b) Applying for temporary license authority under section 10-2-410;

(c) Applying for a resident insurance producer license in this state, was previously licensed in his or her former resident state, and has completed or satisfied preclicensure education as required by that state pertinent to the line or lines of insurance applied for in Colorado;

(d) Applying for a nonresident license in this state pertinent to the line or lines of authority held in the producer's home state.

**Source:** L. 93: Entire article R&RE, p. 1351, § 1, effective January 1, 1995. L. 2001: (1)(d) amended, p. 1194, § 6, effective January 1, 2002.

#### ANNOTATION

**Selling agent found to be an agent of the insurance company** and not the person apply-

ing for insurance. Life Investors Ins. Co. of Am. v. Smith, 833 P.2d 864 (Colo. App. 1992).

**10-2-203. Course certification, registration, and review by commissioner.**

(1) Preclicensure education courses or programs that will be provided and offered to persons applying for life, sickness and accident, property, or casualty licensing are subject to review and certification by the commissioner, except that:

(a) Any full-time program of preclicensure education operated by a qualified domestic company or a company with a qualified home office located in Colorado shall not be subject to review and certification by the commissioner; and

(b) Any applicant or licensee who has attended such a course or program shall be deemed in compliance with the provisions of section 10-2-201 upon certification by the applicant that he or she has completed all required hours of instruction through such a course or program.

(2) Course instruction, content, outline, and course instructors are subject to initial approval by the commissioner and, at the discretion of the commissioner, are also subject to periodic review for continuation. The course provider shall remit the fee as prescribed in accordance with section 10-2-413 to continue or renew such approved course or program.

(3) If, upon review, the commissioner finds that a preclicensure education course or program is not in compliance with all applicable standards, as set forth by rule, the commissioner may order the course or program to be discontinued or revoke the approval of the course provider or both.

**Source:** L. 93: Entire article R&RE, p. 1352, § 1, effective January 1, 1995.

#### ANNOTATION

**Allocation of liabilities for wrongs.** The provisions of subsections (1) and (2) do not govern or allocate liabilities for wrongs as between as principal, agent, and third party; rather, the stat-

ute only provides that insurance agents are the agents of the insurer and insurance brokers are representatives of the insured. Thus, oral representations by an agent cannot impose liability on



an insurer where they contradict the terms of the insurance contract. *Pete's Satire, Inc. v. Commercial Union Ins.*, 698 P.2d 1388 (Colo. App. 1985), *aff'd sub nom.* on other grounds in *Bayly, Martin & Fay v. Pete's Satire*, 739 P.2d 239 (Colo. 1987).

**Individual was agent of insurer and his acts were imputable to insurer** where automobile insurer stipulated that individual was its duly appointed insurance agent and stipulation paralleled statutory definition of that term. *Northwestern Nat. Cas. Co. v. State*, 682 P.2d 486 (Colo. App. 1983).

**Selling agent found to be an agent of the insurance company** and not the person apply-

ing for insurance. *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

**Selling agent was an agent of the insurer and not of the respondent** where there was an employment contract between the selling agent and insurer that set forth the agent's duties with respect to the insurer and where the selling agent initially contacted the respondent because of a request by the respondent's employer and not the respondent himself. *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

**Applied** in *Wright v. Newman*, 598 F. Supp. 1178 (D. Colo. 1984), *aff'd* 767 F.2d 460 (10th Cir. 1985).

## PART 3

### CONTINUING EDUCATION

**Editor's note:** The provisions of the "Reinsurance Intermediary Act" previously contained in part 3 are now contained in part 9 of this article.

**10-2-301. Continuing education requirement - advisory committee.** (1) Producers not exempt from the requirements of this section shall satisfactorily complete up to twenty-four hours of instruction by attending such courses or programs of instruction as may be approved by the commissioner. At least three of the twenty-four hours of continuing education shall be for courses in ethics. The insurance commissioner may adopt rules concerning testing requirements as a part of the certified continuing education. The required hours of instruction shall be completed within twenty-four months after the date the producer's license is required to be renewed, beginning with renewal dates on or after January 1, 1993. A producer may accumulate no more than twelve carry-over credit hours during the one hundred twenty days before the licensing continuation date. Such carry-over credits may be applied to the next continuing education period. If a producer has more than one license to sell insurance in this state, the required hours of instruction shall be completed within twenty-four months after the date the first such license is required to be renewed. For good cause shown, the commissioner may grant an extension of time within which to comply with the requirements of this section, such extension not to exceed an additional one year. An instructor of an approved course of instruction shall qualify for the same number of hours of continuing education as a person attending and successfully completing the course or program, but no instructor shall receive credit more than once for a course or program given more than once during the twenty-four-month period described in this subsection (1).

(2) Any producer who is subject to the requirements of this section shall furnish in a form satisfactory to the commissioner written proof of compliance with the requirements of this section. The requirements of this section are mandatory for any person specified in subsection (3) (a) of this section, and if any such person holds more than one license which is described in subsection (3) of this section, such person shall be required to complete the hours of instruction required under this section only once. For purposes of this section, the term "person" shall include any holder of a license to sell insurance under the laws of this state.

(3) (a) The requirements of this section shall apply to any resident person licensed to solicit and sell the following types of insurance in this state:

- (I) Life insurance and annuity contracts, including variable life and annuity contracts;
- (II) Sickness, accident and health insurance;
- (III) Property and casualty insurance; and
- (IV) Any other type of insurance for which the state requires an examination for licensure.

(b) This section shall not apply to any person holding a limited or restricted license if such license is in good standing with the division and no complaints have been filed against the licensee.

(4) Written certification of any course of instruction completed shall be executed by or on behalf of the sponsoring organization, in a form satisfactory to the commissioner.

(5) Any person who fails to comply with the requirements of this section, or is found after a hearing before the division to have submitted a false or fraudulent certificate of compliance to the commissioner, shall have his or her license suspended until such person satisfactorily demonstrates to the commissioner that all of the requirements of this section, and any other applicable licensing requirement or other statute, have been met.

(6) (a) The commissioner shall be responsible for administering the continuing insurance education requirements under this article and approving courses of instruction that qualify for such purposes. The commissioner shall promulgate such rules as the commissioner deems necessary to administer the continuing education requirements, including the provisions and requirements of this section. The commissioner shall also promulgate rules requiring that producers be required to provide to a continuing education administrator proof of compliance with the continuing education requirements as a condition of license renewal. For persons licensed pursuant to section 10-11-116 (1) (c), compliance with the continuing legal education credits requirements of the Colorado supreme court shall be deemed to meet the requirements of this section.

(b) The position of continuing education administrator shall be established by the commissioner either within the division of insurance or through a contractual arrangement with an outside service provider. All costs of such administrator shall be paid from continuing insurance education fees paid by producers in the manner provided by this section. In no event may the commissioner delegate course approval responsibilities to the continuing education administrator.

(c) Each producer licensed under this article is responsible for paying to the continuing education administrator a reasonable biennial fee for the operation of the continuing education programs, which fee is used to administer the provisions of this section.

(6.5) (a) Continuing education course instruction, content, outline, and course providers are subject to initial approval by the commissioner and, at the discretion of the commissioner, are subject to periodic review for continuation.

(b) If, upon review, the commissioner determines that a continuing education course or program is not in compliance with all applicable standards, as set forth by rule, the commissioner may order the course or program to be discontinued or revoke approval of the course provider, or both.

(7) Repealed.

**Source:** L. 93: Entire article R&RE, p. 1352, § 1, effective January 1, 1995. L. 94: (3)(b), (5), and (6)(b) amended, p. 1628, § 22, effective January 1, 1995. L. 95: (6.5) added, p. 89, § 1, effective March 30; (6)(a) and (6)(c) amended, p. 288, § 13, effective July 1. L. 99: (7) repealed, p. 104, § 1, effective March 24. L. 2001: (3) amended, p. 1195, § 7, effective January 1, 2002. L. 2004: (1) amended, p. 979, § 2, effective August 4. L. 2012: (6)(a) and (6)(c) amended, (HB 12-1266), ch. 280, p. 1494, § 8, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-2-207.5 as it existed prior to 1993.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsections (6)(a) and (6)(c) applies to offenses committed and applications submitted on or after July 1, 2012.

## PART 4

### LICENSING AND APPOINTMENT OF INSURANCE PRODUCERS

**Editor's note:** The provisions of the "Managing General Agents Act" previously contained in part 4 are now contained in part 10 of this article.



**10-2-401. License required.** (1) No person shall act as or hold oneself out to be an insurance producer unless duly licensed as an insurance producer in accordance with this article. Every insurance producer who solicits or negotiates an application for insurance of any kind on behalf of an insurer shall be regarded as representing the insurer and not the insured or any beneficiary of the insured in any controversy between the insurer and such insured or beneficiary. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(2) No insurance producer shall make application for, procure, negotiate for, or place for others any policies for any line or lines of insurance for which he or she is not then qualified and licensed.

(3) (a) Any representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer; except that a license is not required of any officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch thereof who devotes substantially all of his or her time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated.

(b) Any agent, representative, or member of a fraternal benefit society who in the preceding calendar year solicited and procured life insurance contracts on behalf of any society in a face amount of insurance not exceeding fifty thousand dollars or, in the case of any other kind of insurance that the fraternal benefit society may write, solicited and procured such insurance on behalf of not more than twenty-five individuals, who received no commissions or other compensation therefor, and who does not reasonably expect to exceed soliciting or procuring insurance on behalf of more than twenty-five individuals in the current year, shall be exempt from the licensing requirements for an insurance producer.

(4) No insurance producer license shall be granted or extended to any person if the license is being or will be used for the purpose of writing controlled business. As used in this section, "controlled business" means insurance procured or to be procured by or through such person upon:

(a) The person's own life, person, property, or risks, or those of his or her spouse; or

(b) The life, person, property, or risks of the person's employer or the person's own business.

(5) Such a license shall be deemed to have been, or intended to be, used for the purpose of writing controlled business, if during any twelve-month period the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

(6) A title insurance agent and a title insurance company, as defined in section 10-11-102 (9) and (10), shall disclose the names of all affiliated business arrangements to which the company or agent is a party at the time of application for a new license, on the continuation due date of an existing license, and upon a change to any identifying information, in a form and manner acceptable to the commissioner. The disclosure shall include the physical location of the affiliated businesses, identify the settlement producer with whom the company or agent is associated, and identify the underwriter of the title insurance business.

**Source:** L. 93: Entire article R&RE, p. 1355, § 1, effective January 1, 1995. L. 94: (3) amended, p. 740, § 1, effective January 1, 1995. L. 2001: (1) amended, p. 1195, § 8, effective January 1, 2002. L. 2006: (6) added, p. 268, § 3, effective July 1.

**Editor's note:** This section is similar to former §§ 10-2-102 and 10-2-204 as they existed prior to 1993.

**Cross references:** For the provisions pertaining to fraternal benefit societies, see article 14 of this title.



## ANNOTATION

**Law reviews.** For article “Litigating the ‘Deemer’ Statute: Brokers in Insurance Litigation”, see 40 Colo. Law. 89 (August 2011).

**10-2-402. License examination requirement.** (1) Unless exempt pursuant to section 10-2-403, a resident individual applying for an insurance producer license shall pass a written examination. The examination shall reasonably test the individual applicant’s minimum acceptable level of competence as to the particular line or lines of authority for which the individual applicant seeks qualification, unless an individual applicant has been licensed as an insurance producer for the same line or lines of authority in another state within the twelve months immediately preceding the date of receipt of application and files with the commissioner a letter of clearance, issued by the public official having supervision of insurance in the applicant’s former state of residence, stating the individual held a license for the same line or lines of authority during such twelve-month period and that the license was in good standing.

(2) Examination for licensing shall be held at such reasonable times and places as are designated by the commissioner, and such times and places shall be made public.

(3) (a) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the commissioner in accordance with section 10-2-413.

(b) The application for examination shall request the applicant to provide the following information:

(I) The applicant’s name, age, residence address, business address, and mailing address;

(II) The name of any required prelicensing course he or she has completed or is in the process of completing;

(III) The method by which the applicant intends to qualify for the license if other than completing a prelicensing course;

(IV) The highest level of education achieved by the applicant; and

(V) The applicant’s gender, native language, and race or ethnicity; except that the application shall contain a statement that an applicant is not required to disclose his or her gender, native language, or race or ethnicity, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

(c) No later than six months after August 5, 2008, and annually thereafter, the commissioner shall prepare and publish a report that summarizes statistical information relating to insurance producer examinations administered during the preceding calendar year. The report shall include the following information for all examinees combined and separately by race or ethnicity, gender, race or ethnicity within gender, education level, and native language:

(I) The total number of examinees;

(II) The percentage and number of examinees who passed the examination;

(III) The mean scaled scores on the examination; and

(IV) Standard deviation of scaled scores on the examination.

(d) If the commissioner arranges to have the examinations for licensure administered by an independent testing service pursuant to section 10-2-402 (5), the commissioner may provide demographic information to the testing service if the commissioner requires the independent examiner to review and analyze examination results in conjunction with the gender, native language, education level, and race or ethnicity of the examinees.

(4) (Deleted by amendment, L. 2001, p. 1195, § 9, effective January 1, 2002.)

(5) The commissioner shall give, conduct, and grade all examinations, or the commissioner may arrange to have examinations administered and graded by an independent testing service, as specified by contract, in a fair and impartial manner and without discrimination as to individuals examined. The commissioner may arrange for such testing service to recover the cost of the examination from the applicant.

(6) There shall be a separate portion of the examination required for each line of insurance which the applicant proposes to transact under the license.

(7) (Deleted by amendment, L. 2001, p. 1195, § 9, effective January 1, 2002.)

(8) An individual who fails to pass an examination shall remit the required fee and any forms required to retake the failed examination.

(9) An individual who fails to appear for a scheduled examination shall remit the required fee and any forms required to reapply to take the examination.

(10) Applicants for life, health coverages, property, or casualty examinations shall comply with prelicensure education requirements as prescribed in section 10-2-201 prior to taking the written examination.

(11) An insurance producer license issued on or before January 1, 2002, for health maintenance organizations (“HMO”) or nonprofits may be renewed or continued until the licensee fails to meet the requirements of this part 4.

**Source:** L. 93: Entire article R&RE, p. 1356, § 1, effective January 1, 1995. L. 97: (5) amended, p. 1616, § 3; effective July 1. L. 2001: (1), (4), and (7) amended and (11) added, p. 1195, § 9, effective January 1, 2002. L. 2008: (11) amended, p. 209, § 2, effective March 26; (3) amended, p. 1515, § 1, effective August 5.

**Editor’s note:** This section is similar to former §§ 10-2-106 and 10-2-207 as they existed prior to 1993.

**10-2-403. Exemption from license examination.** (1) The following applicants shall be exempt from the written examination requirements set forth in section 10-2-402:

(a) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in this state or another state shall not be required to complete any prelicensing education or examination. This exemption is only available to a nonresident applicant if:

(I) (A) The person is currently licensed in his or her home state for the same line or lines of authority; or

(B) The application is received within twelve months after the cancellation of the applicant’s previous license; and

(II) (A) The prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state; or

(B) The state’s producer database records, maintained by the national association of insurance commissioners or its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) An individual applicant for a health maintenance organization or nonprofit hospital representative producer license or a travel-ticket-selling insurance producer license to solicit, procure, and deliver accident and health or travel baggage insurance policies offered by a life, casualty, or multiple-line insurer licensed in this state;

(b.5) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days after establishing legal residence to become a resident licensee pursuant to section 10-2-404. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the insurance commissioner determines otherwise by regulation.

(c) An individual applicant who holds the designation of chartered life underwriter (“CLU”); except that such individual is not exempt from that portion of the examination pertaining to Colorado laws and rules pertinent to life insurance and health coverage insurance;

(d) An individual applicant who has attained the designation of chartered property and casualty underwriter (“CPCU”); except that such individual is not exempt from taking that portion of the examination pertaining to Colorado laws and rules pertaining to property, casualty, or health coverage;

(e) A nonresident individual applicant who is in compliance with section 10-2-501 (1) (a);



(f) A licensed life insurance producer applicant for a variable contracts license who is in compliance with the qualification requirement in section 10-2-407;

(g) An individual applicant who holds the designation of chartered financial consultant ("ChFC"); except that such individual is not exempt from that portion of the examination pertaining to Colorado laws and rules pertinent to life insurance and health coverage insurance;

(h) An individual applicant who holds the designation of registered health underwriter ("RHU"); except that such individual is not exempt from that portion of the examination pertaining to Colorado laws and rules pertinent to life insurance and health coverage insurance.

**Source:** L. 93: Entire article R&RE, p. 1357, § 1, effective January 1, 1995. L. 95: (1)(c) amended, p. 90, § 3, effective March 30. L. 2001: (1)(a) and (1)(f) amended and (1)(b.5), (1)(g), and (1)(h) added, p. 1196, § 10, effective January 1, 2002. L. 2003: IP(1) amended, p. 1982, § 6, effective May 22.

**Editor's note:** This section is similar to former § 10-2-211 as it existed prior to 1993.

**10-2-404. Application for license.** (1) An applicant for a resident insurance producer license shall make application on a form specified by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that:

(a) The individual is at least eighteen years of age;

(b) The individual has not committed any act which is a ground for denial, suspension, or revocation as set forth in section 10-2-801;

(c) The individual is a resident of this state or is a resident of another state and meets the requirements of section 10-2-502;

(d) If the individual applicant is a nonresident, such applicant has furnished the commissioner with a current certification of license status pursuant to section 10-2-502 (1) (e);

(e) Unless exempt, the individual has satisfied minimum prelicensure education requirements pursuant to part 2 of this article;

(f) The individual has paid the license fee prescribed by the commissioner in accordance with section 10-2-413;

(g) The individual has successfully passed the examination or has satisfied examination qualification requirements for the line or lines of authority for which the individual has applied; and

(h) The individual is competent, trustworthy, and of good moral character and good business reputation.

(2) An insurance agency or business entity acting as an insurance producer shall obtain an insurance producer license. Application shall be made on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) The agency has disclosed to the insurance commissioner all officers, partners, and directors, whether or not they are licensed as insurance producers;

(b) The agency's officers, directors, or partners are trustworthy, of good moral character, and of good business reputation;

(c) The insurance agency or business entity has paid the fees prescribed by the commissioner in accordance with section 10-2-413;

(d) The insurance agency or business entity has designated a licensed producer who is an officer, partner, or director responsible for the insurance agency's or business entity's compliance with the insurance laws and rules of this state;

(e) The insurance agency or business entity has registered with the commissioner the name of each natural person who, as an officer, director, partner, owner, or member of the insurance agency or business entity, is acting as and is licensed as an insurance producer;



(f) The insurance agency or business entity has registered with the commissioner at least one individual who holds a valid insurance producer license for the line or lines of authority requested in the application;

(g) If the insurance agency's or business entity's filing status is nonresident, the insurance agency or business entity has complied with the qualification requirements of section 10-2-502.

(3) The commissioner may require the filing of any documents reasonably necessary to verify the information contained or required in the application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited lines credit insurance, a program of instruction that may be approved by the insurance commissioner.

**Source: L. 93:** Entire article R&RE, p. 1357, § 1, effective January 1, 1995. **L. 2001:** IP(1), (1)(c), (1)(d), (1)(g), IP(2), (2)(c), (2)(d), (2)(e), (2)(f), and (2)(g) amended and (4) added, p. 1197, § 11, effective January 1, 2002.

**Editor's note:** This section is similar to former §§ 10-2-103 and 10-2-207 as they existed prior to 1993.

**10-2-405. Residency - individuals - agencies.** (1) The commissioner may qualify an applicant as a resident of this state and shall issue an insurance producer license to any qualified resident person of this state in accordance with the following:

(a) An individual applicant may qualify as a resident only if he or she resides in this state. Any license issued pursuant to any application claiming residency for licensing purposes shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or jurisdiction, or if the licensee ceases to be a resident of this state.

(b) An insurance agency or business entity may qualify as a resident if the agency has its principal office in this state;

(c) The resident person is in compliance with the requirements of section 10-2-404.

**Source: L. 93:** Entire article R&RE, p. 1359, § 1, effective January 1, 1995. **L. 2001:** (1)(b) amended, p. 1198, § 12, effective January 1, 2002.

**Editor's note:** This section is similar to former § 10-2-207 as it existed prior to 1993.

**10-2-406. Licensing of agencies.** (1) For the purposes set forth in section 10-2-701, an insurance agency or business entity shall be licensed as an insurance producer.

(2) (a) The insurance agency or business entity shall register the name of every natural person who, as a member, officer, director, stockholder, owner, or employee of the agency or business entity, is acting as and is licensed as an insurance producer.

(b) A fee, prescribed by the commissioner in accordance with section 10-2-413, shall be paid for the registration of each insurance producer.

(3) The insurance agency or business entity shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of every change relative to the licensed individual insurance producers registered and authorized to act as insurance producers for the insurance agency or business entity.

(4) The insurance agency or business entity shall, within ten days, notify the commissioner, on a form prescribed by the commissioner, of any change relative to the insurance agency or business entity name, officers, directors, partners, or owners, to report a merger, or that the insurance agency or business entity has ceased doing business in this state.

(5) When an insurance agency or business entity ceases to do business in this state, the insurance agency or business entity shall return the producer license to the commissioner within ten days after ceasing to do business.

(6) When an insurance agency or business entity changes its principal address to another state, the insurance agency or business entity shall, within ten days, notify the commissioner and return the producer license for cancellation. Relicensing will be subject to the provisions of part 5 of this article.

(7) (a) The insurance agency or business entity shall comply with section 10-2-404.

(b) A nonresident insurance agency shall also comply with the qualification requirements of section 10-2-501.

**Source: L. 93:** Entire article R&RE, p. 1359, § 1, effective January 1, 1995. **L. 2001:** (1), (2)(a), (3), (4), (5), (6), and (7)(a) amended, p. 1198, § 13, effective January 1, 2002.

**10-2-407. License - definitions of lines of insurance - authority.** (1) Unless a person is denied licensure pursuant to section 10-2-801, the division shall issue a person who has met the requirements of sections 10-2-401 and 10-2-404 an insurance producer license. An insurance producer may receive qualification for a single license to include one or more of the following lines of authority:

- (a) “Life”, which means insurance coverage on human lives that:
    - (I) Shall include benefits of endowment and annuities; and
    - (II) May include benefits for:
      - (A) The event of death or dismemberment by accident; and
      - (B) Disability income;
  - (b) “Accident and health”, which means insurance coverage for sickness, bodily injury, or accidental death and that may include benefits for disability income;
  - (c) “Variable life and variable annuity products”, which means insurance coverage provided under variable life insurance contracts and variable annuities;
  - (d) “Property”, which means insurance coverage for the direct or consequential loss or damage to property of every kind;
  - (e) “Casualty”, which means insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;
  - (f) Repealed.
  - (g) Limited lines credit insurance;
  - (h) Crop hail;
  - (i) Title;
  - (j) Surplus lines;
  - (k) Travel-ticket-selling;
  - (l) Health maintenance organizations (“HMO”); except that no person shall be issued a new license for this individual line of authority on or after January 1, 2002, pursuant to section 10-2-402;
  - (m) Nonprofits; except that no person shall be issued a new license for this individual line of authority on or after January 1, 2002, pursuant to section 10-2-402;
  - (n) “Personal lines”, which means property and casualty insurance sold to individuals and families for primarily noncommercial purposes; or
  - (o) Any other line of insurance permitted under state law or regulation.
- (2) (Deleted by amendment, L. 2001, p. 1199, § 14, effective January 1, 2002.)
- (3) An insurance producer license for surplus lines may be issued to resident persons pursuant to article 5 of this title.

**Source: L. 93:** Entire article R&RE, p. 1360, § 1, effective January 1, 1995. **L. 99:** (1)(f) amended, p. 988, § 6, effective January 1, 2000. **L. 2001:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(g), (1)(h), (1)(l), (1)(m), and (2) amended and (1)(n) and (1)(o) added, p. 1199, § 14, effective January 1, 2002. **L. 2008:** (1)(h) amended, p. 209, § 3, effective March 26. **L. 2012:** IP(1) amended and (1)(f) repealed, (HB 12-1266), ch. 280, p. 1494, § 9, effective July 1.

**Editor’s note:** (1) This section is similar to former §§ 10-2-104, 10-2-111, 10-2-204, and 10-2-207 as they existed prior to 1993.



(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (1) and repealing subsection (1)(f) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-408. License - contents - continuation due date.** (1) The commissioner shall issue a perpetual insurance producer license to an applicant who has met the requirements of section 10-2-404.

(2) The license shall state the name, address, and personal identification number of the licensee, the date of issuance, general conditions relative to expiration or cancellation, the line or lines of insurance covered by the license, and any other information the commissioner deems proper or necessary.

(3) The license issued to an individual, as a sole proprietor, shall include the trade name under which the licensee acts in the solicitation or negotiation of insurance contracts.

(4) Subject to continuation, each insurance producer license shall remain in effect unless revoked or suspended as long as the continuation fee as prescribed by the commissioner in accordance with section 10-2-413 is paid and education requirements are met on or before the due date.

(5) The commissioner shall establish, by rule, the continuation due date and application procedures for continuation of the license and for the acceptance of a late filing fee.

(6) Any person who holds either a Colorado insurance producer license, a resident surplus lines license, or the equivalent issued by another state or territory that offers Colorado surplus lines producers' nonresident licenses on a reciprocal basis and is deemed by the commissioner to be competent and trustworthy may be licensed as a surplus line producer upon the condition that the producer shall conduct business under the license in accordance with the provisions of this article and shall promptly remit the taxes provided by section 10-5-111.

(7) A licensed insurance producer who fails to comply with license continuation or renewal procedures due to military service, long-term medical disability, or any other condition the commissioner deems appropriate, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with continuation or renewal procedures.

**Source:** L. 93: Entire article R&RE, p. 1361, § 1, effective January 1, 1995. L. 95: (6) amended, p. 489, § 1, effective May 16. L. 2001: (6) amended and (7) added, p. 1200, § 15, effective January 1, 2002.

**Editor's note:** This section is similar to former §§ 10-2-104, 10-2-111, and 10-2-207 as they existed prior to 1993.

**10-2-409. License - amendment - reissuance.** (1) An insurance producer licensee shall promptly notify the commissioner, on a form prescribed by the commissioner, of any change that will require amending a license to reflect that change, including without limitation a legal change of the licensee's name, a change of address, or change or removal of a trade name. The commissioner may require the licensee to furnish any documents necessary to verify any change and to properly amend the license.

(2) Repealed.

**Source:** L. 93: Entire article R&RE, p. 1362, § 1, effective January 1, 1995. L. 2001: (2) repealed, p. 1201, § 16, effective January 1, 2002.

**10-2-410. Temporary licensing.** (1) The commissioner may issue a temporary license to an individual to act as an insurance producer for a period not to exceed one hundred eighty days, without requiring an examination, if the commissioner deems that such temporary license authority is necessary for the servicing of an insurance business in the following cases:



- (a) To the surviving spouse or next of kin, or to the executor or an employee, of a licensed insurance producer who becomes deceased;
- (b) To the surviving spouse or next of kin, or to an employee or the legal guardian, of a licensed insurance producer who becomes disabled;
- (c) To a member, employee, or officer of a licensed insurance agency or business entity, licensed as an insurance producer upon the death or disability of an individual designated in or registered as to the agency or business entity license;
- (d) To the designee of a licensed insurance producer upon entering active service in the armed forces of the United States;
- (e) To any person in any other circumstance where the commissioner deems that the public interest will best be served by the issuance of such license.

(2) The commissioner may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee. The commissioner may impose other requirements designed to protect insureds and the public. The commissioner may, by order, revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

**Source:** L. 93: Entire article R&RE, p. 1362, § 1, effective January 1, 1995. L. 2001: IP(1) and (1)(c) amended and (2) added, p. 1201, § 17, effective January 1, 2002.

**Editor's note:** This section is similar to former § 10-2-219 as it existed prior to 1993.

**10-2-411. Duplicate license.** The commissioner may issue a duplicate license to any actively licensed insurance producer if such producer's license is lost, stolen, or destroyed upon an affidavit by the producer in a form prescribed and furnished by the commissioner concerning the facts of such loss, theft, or destruction.

**Source:** L. 93: Entire article R&RE, p. 1362, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1202, § 18, effective January 1, 2002.

**10-2-412. Change of address - notification.** (1) Individual and insurance agency producer licensees shall inform the commissioner in writing, in a form prescribed by the commissioner, of any change of address within thirty days after the change.

(2) Failure of any licensee to inform the commissioner of any change to the licensee's address of record or residence address shall be grounds for the assessment of a penalty.

**Source:** L. 93: Entire article R&RE, p. 1362, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1202, § 19, effective January 1, 2002.

**10-2-413. Fees.** (1) The commissioner shall, by rule, set reasonable fees and penalties for the following:

- (a) Insurance producer license; and
- (b) Continuation of license.

(2) All fees payable to the commissioner pursuant to this section shall be nonrefundable. Fees shall be set at the levels necessary to ensure that revenues from such fees, together with revenues from all other fees and taxes collected by the division of insurance in any fiscal year, do not exceed the division's actual direct and indirect costs of operation for that year.

**Source:** L. 93: Entire article R&RE, p. 1363, § 1, effective January 1, 1995. L. 95:

(1)(t) and (1)(u) added, p. 90, § 4, effective March 30. **L. 99:** (1)(o), (1)(p), and (1)(r) repealed, p. 663, § 1, effective January 1, 2000. **L. 2001:** (1) amended, p. 1202, § 20, effective January 1, 2002.

**Editor's note:** This section is similar to former §§ 10-2-110 and 10-2-207 as they existed prior to 1993.

**10-2-414. Additional lines of authority - application for license.** An insurance producer licensee requesting licensure for any additional line or lines of authority shall comply with the requirements of section 10-2-404. Upon receipt of the application filing, any supporting documents as required by section 10-2-404, and the applicable fee, the commissioner may issue a replacement license to include the additional lines.

**Source:** **L. 93:** Entire article R&RE, p. 1364, § 1, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1203, § 21, effective January 1, 2002.

**Editor's note:** This section is similar to former § 10-2-208 as it existed prior to 1993.

**10-2-415. Appointment of insurance producer by insurer - continuation - exceptions. (Repealed)**

**Source:** **L. 93:** Entire article R&RE, p. 1364, § 1, effective January 1, 1995. **L. 99:** Entire section repealed, p. 663, § 2, effective January 1, 2000.

**10-2-415.5. Appointment of insurance producer - continuation - renewal - exceptions.** (1) No insurance producer shall claim to be a representative or authorized or appointed agent of, or use any other term implying a contractual relationship with, a particular bail insurance company or accept applications on behalf of the bail insurance company unless the insurance producer becomes through a written contract a producer appointee, appointed by that bail insurance company in accordance with this section, to act in the capacity of an agent of the bail insurance company.

(2) (a) A bail insurance company shall notify the commissioner of each insurance producer appointment. Each bail insurance company shall file with the commissioner, monthly or at such other less frequent intervals as the commissioner may prescribe, a current list of insurance producers that it has appointed to solicit business on its behalf. The list shall contain all relevant appointment information as prescribed by the commissioner, including the effective date of appointment.

(b) Subject to renewal, each insurance producer appointment shall remain in effect until:

(I) The insurance producer's license is allowed to expire, discontinued, or cancelled by the insurance producer or revoked by the commissioner; or

(II) Notice of termination of the appointment is filed with the commissioner by the insurer.

(c) (I) A bail insurance company shall not appoint an insurance producer to act as its agent to write bail bonds unless the agent is licensed as an insurance producer authorized to write bail bonds and has completed the preclicensure education required by this paragraph (c) and submitted to the bail insurance company evidence of satisfactory completion of the education. The education must be approved by the division and consist of at least:

(A) Eight clock hours regarding bail bonding, two of which concern the criminal court system, two of which concern bail bond industry ethics, and four of which concern the bail bond laws; and

(B) Sixteen clock hours of training in bail recovery practices that complies with standards established by the peace officers standards and training board under section 24-31-303 (1) (h), C.R.S.

(II) This paragraph (c) does not apply to a person who has successfully completed the required preclicensure training pursuant to section 12-7-102.5, C.R.S., as it existed prior to July 1, 2012.



(III) A bail insurance company failing to comply with this paragraph (c) is subject to discipline under section 10-1-110 or the assessment of a penalty.

(3) Each active insurance producer appointment shall be subject to renewal on October 1 of the renewal year. The division shall provide a list of active insurance producer appointees to the bail insurance company along with a renewal invoice stating the fee required for the renewal of each active insurance producer appointment.

(4) Any appointment that is not renewed on or before October 1 shall be deemed to have expired or been discontinued, effective on that date; except that the commissioner may renew an insurer's appointment upon receipt of the renewal invoice together with the renewal fees due and any applicable late fee.

**Source: L. 2004:** Entire section added, p. 1749, § 1, effective July 1. **L. 2012:** (1), (2)(a), IP(2)(b), (2)(b)(I), and (3) amended and (2)(c) added, (HB 12-1266), ch. 280, p. 1494, § 10, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsection (2)(c) and amending subsections (1) and (2)(a), the introductory portion to subsection (2)(b), and subsections (2)(b)(I) and (3) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-415.6. Bail bond reports required - repeal.** (1) Each insurance producer who writes bail bonds shall submit an annual report in a format required by the commissioner covering July 1 to June 30, no later than October 1 of the following year, of the following information for bail bonds posted in Colorado by the producer during the reporting period:

- (a) The number of bail bonds posted with a court;
- (b) The number of bail bonds discharged by a court;
- (c) The number of bail bonds discharged by a court for which the defendant appeared for all scheduled court appearances for the duration of the bond;
- (d) The number of bail bonds discharged by a court for which the defendant's bond was revoked by a court at the request of the producer for any reason other than failure to appear;
- (e) The number of bail bonds discharged by a court for which the defendant's bond was revoked by a court at the request of the producer because the defendant was charged with a new criminal offense alleged to have been committed during the duration of the bond; and
- (f) The number of bail bonds posted by the producer or any other producer in the producer's agency for a defendant during the time the defendant was covered by another bond posted by the producer or the producer's agency for another criminal case.

(2) If, during the reporting period from July 1, 2012, to June 30, 2013, or any year thereafter, the insurance producer, the state judicial department, representatives of law enforcement, and representatives of county government complete the design of an instrument, system, or other method of proper verification of the actions of an insurance producer in returning the defendant to custody or to the court for further proceedings following a failure to appear on a posted bond, then the insurance producer may report the following:

- (a) The number of defendants who were returned to court through the actions of the insurance producer or the producer's agent after failure to appear;
- (b) The number of defendants who were returned to custody by action of the insurance producer or the producer's agent after failure to appear; and
- (c) The number of consents of surety filed with the court to continue the bond after failure to appear.

(3) In the annual report required by this section, the insurance producer shall sign and affirm the information submitted is true and accurate to the best of the producer's knowledge.

(4) This section is repealed, effective July 1, 2015.

**Source: L. 2012:** Entire section added, (HB 12-1266), ch. 280, p. 1496, § 11, effective July 1.



**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-415.7. Termination of insurance producer bail bonding agent - notice - penalty.** (1) Upon the termination of the appointment of an insurance producer bail bonding agent, the insurer shall, within fifteen days, notify the commissioner and the appointee of such termination by certified mail.

(2) If the termination of an agent's appointment is for any of the causes listed in section 10-1-128 or 10-2-801, the insurer shall notify the commissioner of the reason and, if the commissioner so requests, the insurer shall provide any information, records, statements, or other data pertaining to the termination that may be used by the division in any action taken under section 10-2-801.

(3) Any information, documents, records, or statements provided pursuant to this section shall be privileged, and there shall be no liability on the part of, nor shall a cause of action of any nature arise against, the division, the insurance company, or any authorized representative for requesting or providing such information, documents, records, or statements; except that such information may be used by the division to pursue administrative or criminal prosecutions.

(4) In addition to any other penalty or liability authorized by law, the failure or refusal of any insurer to comply with the requirements of subsection (1) or (2) of this section shall be cause for the assessment against the insurer of a civil penalty of up to one thousand dollars for each such failure or refusal if, after notice to the insurer and after a hearing in accordance with section 24-4-105, C.R.S., the commissioner finds that the insurer has violated this section.

**Source:** **L. 2004:** Entire section added, p. 1749, § 1, effective July 1. **L. 2012:** (2) amended, (HB 12-1266), ch. 280, p. 1497, § 12, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-416. Notification to the commissioner of termination.** (1) **Termination for cause.** An insurer or authorized representative of the insurer that terminates employment, a contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in this article and article 3 of this title, or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in this article and article 3 of this title. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(2) **Ongoing notification requirement.** The insurer or the authorized representative of the insurer shall promptly notify the commissioner, in a format prescribed by the commissioner, if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner pursuant to subsection (1) of this section had the insurer known of its existence.

(3) **Copy of notification to be provided to producer.** A copy of the notification pursuant to this subsection (3) shall be provided to the producer pursuant to the following requirements:

(a) Within fifteen days after making the notification required by subsections (1) and (2) of this section, the insurer shall mail a copy of the notification to the producer at the producer's last-known address. If the producer is terminated for cause as listed in section 10-2-801, the insurer shall provide a copy of the notification to the producer at the producer's last-known address by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

(b) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (5) of this section.

(4) **Immunities.** (a) In the absence of wilful and wanton behavior, an insurer, the authorized representative of the insurer, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under this paragraph (a) was reported to the commissioner, if the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) Paragraph (a) of this subsection (4) shall not abrogate or modify any existing statutory or common law privileges or immunities.

(5) **Confidentiality.** (a) (I) Except as provided in paragraph (e) of this subsection (5), any documents, materials, or other information in the control or possession of the division of insurance that is furnished by an insurer, producer, or employee or agent thereof acting on behalf of the insurer or producer, or obtained by the commissioner in an investigation pursuant to this section, shall not be subject to article 72 of title 24, C.R.S.

(II) The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection (5).

(c) In order to assist in the performance of the commissioner's duties under this article, the commissioner, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information, and has the authority to do so, may:

(I) Share documents, materials, or other information, including the documents, materials, or information subject to paragraph (a) of this subsection (5), with any of the following:

(A) Other state, federal, and international regulatory agencies;

(B) The national association of insurance commissioners or its affiliates or subsidiaries; and

(C) State, federal, and international law enforcement authorities.

(II) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) Enter into agreements governing sharing and use of information consistent with this subsection (5).

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (c) of this subsection (5).

(e) Nothing in this article shall preclude the commissioner or the commissioner's designee from releasing final disciplinary actions or closed files, including those portions of



the record pertaining to for cause terminations that shall be open to public inspection pursuant to article 72 of title 24, C.R.S., and to a database or other clearinghouse service maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

(f) Nothing in this article shall preclude the commissioner or the commissioner's designee from disclosing any information obtained pursuant to the provisions of this article to any state, federal, or international law enforcement agency for use in any criminal or civil investigation or prosecution, nor shall any such information be considered privileged and confidential in any criminal or civil matter, investigation, or prosecution by a government agency, except as provided in part 3 of article 72 of title 24, C.R.S.

(g) Nothing in this article shall preclude the commissioner or the commissioner's designee from disclosing any information obtained or developed pursuant to the provisions of this article for use in any private civil matter, nor shall any such information be considered privileged or confidential, except as provided in part 3 of article 72 of title 24, C.R.S. Any party in interest may request the commissioner or the commissioner's designee to find that disclosure of such information in any private civil matter shall cause substantial injury to the public interest. If the commissioner finds that disclosure shall cause substantial injury to the public interest, the commissioner or the commissioner's designee may apply to the district court for an order permitting restrictions on disclosure as authorized by section 24-72-204 (6), C.R.S.

(6) **Penalties for failing to report.** An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction, may, after notice and hearing, have the producer's license or insurer's certificate of authority suspended or revoked and may be fined in accordance with sections 10-2-804 (4) and 10-3-1108.

**Source:** L. 93: Entire article R&RE, p. 1365, § 1, effective January 1, 1995. L. 96: (2) amended, p. 289, § 3, effective July 1. L. 99: Entire section repealed, p. 663, § 2, effective January 1, 2000. L. 2001: Entire section RC&RE, p. 1203, § 22, effective January 1, 2002.

**Editor's note:** This section is similar to former § 10-2-216 as it existed prior to 1993.

**10-2-416.5. Required availability to commissioner of list of producer appointees for enforcement purposes.** Each insurer shall maintain a current list of producers contractually authorized to accept applications on behalf of the insurer. Each insurer shall make such list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this title.

**Source:** L. 99: Entire section added, p. 663, § 3, effective January 1, 2000.

**10-2-417. Public insurance adjuster - license required.** No person shall act or hold oneself out to be a public insurance adjuster adjusting claims for losses or damages arising out of policies of fire and allied lines insurance employed by and representing solely the interest of the named insured in a policy of fire and allied lines insurance unless licensed therefor. The commissioner may accept application of any person to act as a public insurance adjuster. The commissioner may promulgate such rules as are necessary to carry out the provisions of this section, including establishing nonrefundable fees and testing requirements for all applicants for licensure.

**Source:** L. 95: Entire section added, p. 90, § 5, effective March 30.

**10-2-418. Bail bonding authority.** (1) The division shall advise state court administrators that a person may furnish a bail bond if the person is a licensed insurance producer with a power of attorney from an insurance company, appears on the division's web site as



an active insurance producer with casualty authority, and is appointed by that insurance company.

(2) The division shall issue credentials to each insurance producer who is appointed by a bail insurance company that clearly identifies the person as holding authority to act as a bail bond agent.

**Source: L. 2012:** Entire section added, (HB 12-1266), ch. 280, p. 1497, § 13, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this section applies to offenses committed and applications submitted on or after July 1, 2012.

## PART 5

### NONRESIDENT LICENSES

**10-2-501. Reciprocity.** (1) The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the applicant's home state, except those requirements imposed by section 10-2-502, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) A nonresident producer's satisfaction of a nonproducer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

**Source: L. 93:** Entire article R&RE, p. 1366, § 1, effective January 1, 1995. **L. 2001:** Entire section R&RE, p. 1206, § 23, effective January 1, 2002.

**10-2-502. Nonresident licensing - qualification.** (1) The commissioner may qualify an applicant as a nonresident, unless the applicant is denied licensure pursuant to section 10-2-801, and shall issue an insurance producer license to any qualified nonresident person in accordance with the following:

- (a) The person maintains a license in good standing in the person's home state;
- (b) An insurance agency or business entity may qualify as a nonresident if the agency or business entity has its principal office located in another state;
- (c) The nonresident person holds a similar license that is awarded on the same basis in the nonresident's home state and for the same line or lines of authority applied for in this state;
- (d) The person has submitted the proper request for licensure and has paid the fees set forth by regulation;
- (e) The nonresident person has filed with the commissioner a current certification of license status for the purposes set forth in section 10-2-501;
- (f) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the application, a completed uniform application.

(2) The commissioner may verify the producer's licensing status through the producer database maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

(3) A license issued to a nonresident person shall confer the same rights and privileges as those afforded a resident licensee.

(3.5) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days after the change of legal residence. No fee or license application is required.

(4) If the insurance department of the nonresident insurance producer's resident state suspends, terminates, or revokes the producer's insurance license in that state, the nonres-

ident insurance producer shall notify the commissioner and shall return the Colorado nonresident license pursuant to section 10-2-804.

(5) Notwithstanding any other provision of this article, a person licensed as a surplus lines producer in the surplus lines producer's home state shall receive a nonresident surplus lines producer license pursuant to subsection (1) of this section; except that nothing in this section otherwise amends or supercedes any provision of this part 5.

(6) Notwithstanding any other provision of this article, a person licensed as a limited lines credit insurance or other type of limited line producer in the limited line producer's home state shall receive a nonresident limited line producer license, pursuant to subsection (1) of this section, granting the same scope of authority granted under the license issued by the producer's home state. For the purposes of this subsection (6), limited lines insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 10-2-407.

**Source: L. 93:** Entire article R&RE, p. 1366, § 1, effective January 1, 1995. **L. 2001:** (1), (2), and (3) amended and (3.5), (5), and (6) added, p. 1206, § 24, effective January 1, 2002. **L. 2012:** IP(1) amended, (HB 12-1266), ch. 280, p. 1497, § 14, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-503. Commissioner as agent for service of process.** (1) By the filing of the application and issuance of a nonresident insurance producer license, a nonresident insurance producer licensee shall be deemed to have appointed the commissioner and successors in office as said nonresident's agent upon whom all lawful process in any legal proceeding against the nonresident may be served and to have agreed that any such lawful process has the same legal force and validity as personal service of process upon such nonresident.

(2) The commissioner shall, within ten working days after receiving three copies of the process served, forward a copy of such process by registered or certified mail to the person for whom the commissioner has received such process at the nonresident individual's address of record, or, if the nonresident is an insurance agency, at the agency's principal place of business. The commissioner shall keep a record of all process so served.

(3) Service of process upon any such licensee in any action or proceeding instituted by the commissioner under this section shall be made by the commissioner by mailing such process by registered mail to an individual licensee at the licensee's last known address of record or to an insurance agency licensee at its principal place of business.

**Source: L. 93:** Entire article R&RE, p. 1367, § 1, effective January 1, 1995. **L. 98:** (2) amended, p. 1325, § 25, effective June 1. **L. 2001:** (2) amended, p. 1208, § 25, effective January 1, 2002.

## PART 6

### BANKS AND BANK HOLDING COMPANIES

**10-2-601. Financial institutions may sell insurance - where - regulation.** (1) For the purposes of this part 6:

(a) and (b) (Deleted by amendment, L. 97, p. 426, § 1, effective April 24, 1997.)

(c) "Credit insurance" has the same meaning as set forth in section 10-10-103 (2).

(d) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(e) "Financial institution" means a state bank, including an industrial bank, or a bank and trust company chartered by a state, a trust company, a savings and loan association, a credit union, or a national bank and the financial institution is located in this state.



“Financial institution” includes federally chartered savings and loan associations and credit unions located in this state.

(2) No financial institution or employee thereof shall be licensed or admitted, directly or indirectly, to sell insurance in this state; except that:

(a) A financial institution or employee thereof may engage in the activities of an insurance producer, an insurance agency, or a business entity in this state and shall be licensed pursuant to this article. Such producers, agencies, and business entities shall be subject to the provisions of this title and rules promulgated pursuant thereto.

(b) Unlicensed employees of financial institutions shall not sell insurance or annuities. Such employees may direct customers to licensed persons.

(c) A financial institution, or any subsidiary, affiliate, or employee thereof, may be licensed to sell insurance, credit insurance, and fixed and variable annuity contracts in accordance with regulations promulgated by the commissioner.

(d) Any financial institution, or any subsidiary, affiliate, or employee thereof, may be permitted to own an insurance company authorized to sell, and that insurance company’s employees may be licensed to sell, insurance to guarantee the payment of any amounts due in connection with any securities or obligations described in section 11-57-101, C.R.S.; except that no financial institution, or any subsidiary or affiliate subject to the supervision of the banking board created in section 11-102-103, C.R.S., shall own such an insurance company without the consent of the banking board, and no financial institution subject to the supervision of the financial services board created in section 11-44-101.6, C.R.S., shall own such an insurance company without the consent of the financial services board, and no financial institution shall invest more than ten percent of its capital and surplus in such an insurance company.

(e) Any financial institution, or any subsidiary or affiliate thereof, may own, directly or indirectly, a captive insurance company operating under article 6 of this title.

(f) Any trade association organized primarily to promote the common interests of financial institutions, or an affiliate or subsidiary of such association, may hold stock or other interests in an insurance company, or an affiliate or subsidiary thereof.

(3) and (4) (Deleted by amendment, L. 97, p. 426, § 1, effective April 24, 1997.)

(5) The commissioner shall promulgate such rules as are necessary to implement this part 6.

**Source:** L. 93: Entire article R&RE, p. 1367, § 1, effective January 1, 1995. L. 94: (2)(a) amended, p. 1353, § 4, effective January 1, 1995. L. 97: IP(1), (1)(a), (1)(b), and (2) to (5) amended and (1)(e) added, p. 426, § 1, effective April 24. L. 99: (1)(e) amended, p. 585, § 1, effective May 17. L. 2001: (2)(a) amended, p. 1208, § 26, effective January 1, 2002. L. 2003: (2)(d) amended, p. 1206, § 4, effective July 1.

**Editor’s note:** This section is similar to former § 10-2-221 as it existed prior to 1993.

**10-2-602. Sale of annuities and insurance by financial institutions - certain tying arrangements prohibited.** (1) In addition to the requirements of section 10-3-1105, no financial institution, or subsidiary or employee of a financial institution, shall extend credit, lease or sell property of any kind, furnish any service, or fix or vary the consideration for any such extension of credit, lease, sale, or service on the condition or requirement that the customer shall obtain an insurance contract or an annuity from such financial institution or any subsidiary or employee.

(2) No financial institution may offer a financial product or service, or fix or vary the conditions of such product or service, conditioned on a requirement that the customer obtain insurance from such financial institution or any specific person.

(3) No person shall require or imply that the purchase of an insurance product, or of an annuity from a financial institution, is a condition of the lending of money or extension of credit, maintenance of a trust account, establishment or maintenance of a checking, savings, deposit, or share account, or the provision of products or services related to such activities.



**Source: L. 94:** Entire section added, p. 1353, § 3, effective January 1, 1995. **L. 97:** Entire section amended, p. 429, § 2, effective April 24.

**10-2-603. Bank sale of annuities - disclosure requirements.** (1) Any financial institution, or any subsidiary or employee thereof, which sells a fixed or variable annuity contract shall receive written acknowledgment from the purchaser that the annuity which is being purchased may involve investment risk and is not insured by the federal deposit insurance corporation or the national credit union share insurance fund. Such written notice shall be clear and conspicuous and shall be given before or contemporaneously with the purchase of the annuity. This subsection (1) shall apply to an affiliate or subsidiary of a financial institution if such an affiliate or subsidiary sells insurance on the premises of a financial institution.

(2) A clear and conspicuous notice substantially in the following form complies with this section:

Acknowledgment

\_\_\_\_\_  
(Complete name of investment)

I understand that the investment product I am purchasing is not a bank deposit and is not an obligation of, nor is it guaranteed by, any bank. This product is not insured or guaranteed by the federal deposit insurance corporation. In addition, I understand that the investment product purchased may be subject to investment risk, including possible loss of principal, and that any investment product's past performance should not be considered an indication of future results.

(Date) \_\_\_\_\_

\_\_\_\_\_  
(Signed)

**Source: L. 94:** Entire section added, p. 1354, § 7, effective July 1, 1995. **L. 97:** (1) amended, p. 429, § 3, effective April 24.

**10-2-604. Disclosures.** (1) A financial institution, and any person selling insurance with a cash value or a cash accumulation component on behalf of a financial institution, shall disclose to the financial institution's customers or members, and on any advertisements or promotional material, that insurance offered, recommended, sponsored, or sold by the financial institution, or on the premises of the financial institution:

- (a) Is not a deposit;
- (b) Is not insured by the federal deposit insurance corporation, the national credit union share insurance fund, or any agency of the state of Colorado or the federal government;
- (c) Is not guaranteed by the financial institution or any affiliated insured depository institution;
- (d) May involve investment risk, including loss of principal; and
- (e) May be purchased from a producer of the customer's choice and that the customer's choice of another insurance provider will not affect the customer's relationship with the financial institution.

**Source: L. 97:** Entire section added, p. 429, § 4, effective April 24. **L. 2001:** (1)(e) amended, p. 1208, § 27, effective January 1, 2002.

**10-2-605. Misleading advertising.** (1) No financial institution, or any subsidiary, affiliate, or employee of a financial institution, may issue advertising that would lead a reasonable person to believe that the state of Colorado or the federal government:

- (a) Is responsible for insurance sales activities of the financial institution or any subsidiary, affiliate, or employee thereof;

(b) Guarantees any return on insurance products or is a source of payment of any insurance obligations sold by the financial institution or any subsidiary, affiliate, or employee thereof.

**Source: L. 97:** Entire section added, p. 430, § 4, effective April 24.

**10-2-606. Discrimination against affiliated agents.** (1) No financial institution shall:

(a) Require, as a condition of providing or renewing a contract for providing a product or service to any customer, that the customer purchase, finance, or negotiate any policy or contract of insurance through any particular person;

(b) In connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not associated with such institution;

(c) Impose any requirement on any insurance producer who is not associated with the financial institution that is not imposed on any insurance producer who is associated with such institution; or

(d) Unless otherwise authorized by applicable federal or state law, require any debtor, insurer, or producer to pay a separate charge in connection with the handling of insurance that is required under a contract.

**Source: L. 97:** Entire section added, p. 430, § 4, effective April 24. **L. 2001:** (1)(c) and (1)(d) amended, p. 1209, § 28, effective January 1, 2002.

**10-2-607. Location of sales.** To the extent practicable, a financial institution's sale of insurance shall be in a location distinct from a teller window or common teller area. Unlicensed employees of financial institutions shall not sell insurance or annuities. Such employees may direct customers to licensed persons.

**Source: L. 97:** Entire section added, p. 431, § 4, effective April 24.

## PART 7

### BUSINESS CONDUCT OF LICENSEES

**10-2-701. Assumed names - registration - rules.** Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that would tend to be misleading to the public or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.

**Source: L. 93:** Entire article R&RE, p. 1370, § 1, effective January 1, 1995. **L. 2001:** Entire section amended, p. 1209, § 29, effective January 1, 2002. **L. 2008:** Entire section amended, p. 210, § 4, effective March 26.

**10-2-702. Commissions.** (1) No insurer or insurance producer shall pay, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting, or negotiating insurance within this state unless, at the time such services were performed, such person was a duly licensed insurance producer under this article for the performance of such services. In addition, no person, other than a person appropriately licensed by this state as an insurance producer at the time such services were performed, shall accept any such consideration; except that any person duly licensed under



this article may pay or assign such person's commissions to, or direct that such person's commissions be paid to, a partnership of which the person is a member, employee, or agent or to a corporation of which the person is an officer, employee, or agent. This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(2) An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency, business entity, or persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would violate section 10-3-1104 (1) (g).

**Source:** **L. 93:** Entire article R&RE, p. 1370, § 1, effective January 1, 1995. **L. 95:** Entire section amended, p. 89, § 2, effective March 30. **L. 2001:** Entire section amended, p. 1209, § 30, effective January 1, 2002. **L. 2012:** (2) amended, (HB 12-1266), ch. 280, p. 1497, § 15, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

### **10-2-703. Countersignature not required. (Repealed)**

**Source:** **L. 93:** Entire article R&RE, p. 1370, § 1, effective January 1, 1995. **L. 2001:** Entire section repealed, p. 1210, § 31, effective January 1, 2002.

**10-2-704. Fiduciary responsibilities.** (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

(c) All returned premiums received from insurers or credited by insurers to the account of the licensee shall be remitted to or credited to the account of the person entitled thereto within thirty days after such receipt or credit.

(d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.

(2) Every insurer shall remit unearned premiums to the insured or the proper agent, or shall otherwise credit the account of the proper licensee, as soon as is practicable after entitlement thereto has been established, but in no event more than forty-five days after the effective date of any cancellation or termination effected by the insurer or after the date of entitlement thereto as established by notification of cancellation or of termination or as otherwise established. It shall be the responsibility of any insurance producer having knowledge of a failure on the part of any insurer to comply with this subsection (2) to promptly report such failure to the commissioner in writing.

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

(4) Any insurer that delivers, in this state, a policy of insurance to an insurance producer representing the interest of the insured upon the application or request of such producer shall be deemed to have authorized such producer to receive on the insurer's behalf any premium due upon issuance or delivery of the policy; and the insurer shall be deemed to have so authorized the producer.



**Source: L. 93:** Entire article R&RE, p. 1370, § 1, effective January 1, 1995. **L. 2001:** (4) amended, p. 1210, § 32, effective January 1, 2002.

**10-2-705. Bail bond documents - requirements - rules.** (1) The insurance producer who posts a bail bond with the court on behalf of a defendant shall ensure that the following documents comply with the following provisions:

- (a) An indemnity agreement must:
  - (I) Be in writing;
  - (II) Be signed by the producer;
  - (III) Be signed by the defendant or indemnitor;
  - (IV) Set forth the amount of bail set in the case, the name of the defendant released on the bail bond, the court case number if available, the court where the bond is executed, the premium charged, the amount and type of collateral held by the insurance producer, and the conditions under which the collateral is returned;
  - (V) Contain documentation that the indemnitor has received copies of signed and dated disclosure forms; and
  - (VI) If the defendant or indemnitor is illiterate or does not read English, contain a note on the indemnity agreement that the producer or a third party has read or translated the agreement to the defendant or indemnitor and be affixed with an affidavit to the indemnity agreement attesting that the document was translated;
- (b) A promissory note must be:
  - (I) In writing;
  - (II) Signed by the producer; and
  - (III) Signed by the defendant or indemnitor;
- (c) A collateral receipt must:
  - (I) Be dated;
  - (II) Be in writing;
  - (III) Be signed by the producer;
  - (IV) Be signed by the defendant or indemnitor;
  - (V) Be prenumbered;
  - (VI) Contain a full description of the collateral, including the condition of the collateral at the time it is taken into custody; and
  - (VII) Set forth the amount of bail set in the case, the name of the defendant released on the bail bond, the court case number, the court where the bond is executed, the premium charged, the amount and type of collateral held by the insurance producer, and the conditions under which the collateral is returned;
- (d) A bail bond revocation request must be:
  - (I) Dated;
  - (II) In writing;
  - (III) Signed by the producer; and
  - (IV) Signed by the defendant or indemnitor.

(2) (a) Before accepting consideration, the insurance producer who writes bail bonds shall commit to writing, sign, date, and obtain the defendant's or indemnitor's signature on an arrangement for the payment of all or part of the premium, commission, or fee, including the payment schedule. The signature of the insurance producer who writes bail bonds is not an obligation to pay any debt owed to a lender. To be enforceable, interest and financial charges on any unpaid premium must comply with the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S.

(b) Before accepting consideration or taking collateral, the insurance producer who writes bail bonds shall provide, in a form prescribed by the commissioner, a disclosure statement to each defendant and indemnitor detailing the terms of the bail bond.

(3) (a) An insurance producer who posts a bail bond with the court and who accepts consideration for a bail bond or undertaking shall, for each payment received, provide to the person tendering payment a prenumbered, signed receipt containing the following:

- (I) The date;
- (II) The defendant's name;
- (III) A description of the consideration and amount of money received;

- (IV) The purpose for which it was received;
- (V) The number of any power-of-attorney form attached to the bail bond;
- (VI) The penal sum of the bail bond;
- (VII) The name of the person tendering payment; and
- (VIII) The terms under which the money or other consideration is released.

(b) The insurance producer who posts a bail bond with the court shall provide the person tendering payment a signed and dated receipt for each premium payment listing the amount paid.

(4) The insurance producer shall prepare or execute separate agreements and documents for each time the producer posts a bail bond with the court. The producer shall give the indemnitor a copy of each document executed in the course of the bail bond transaction.

(5) For three years after the date of discharge of a bail bond and return of any collateral or proof of notice to the defendant or indemnitor that any promissory note has been satisfied, the insurance producer who posts the bail bond with the court shall keep at the producer's business copies of each receipt, indemnity agreement, bond, disclosure statement, payment plan, bond revocation request, or other document or information related to the bond transaction the commissioner reasonably requires by rule and shall make these documents available for inspection by the commissioner or the commissioner's authorized representative during normal business hours.

(6) The indemnitor may be the defendant.

(7) The commissioner may examine the business practices, books, and records of any insurance producer as often as the commissioner deems appropriate.

**Source: L. 2012:** Entire section added, (HB 12-1266), ch. 280, p. 1498, § 16, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-706. Insurance producer designee - responsibility.** An insurance producer may use another properly licensed and appointed insurance producer as an agent to comply with the requirements of this section, but the insurance producer who posts the bail bond with the court is responsible for compliance with this section and is subject to discipline for noncompliance with any provision of this section.

**Source: L. 2012:** Entire section added, (HB 12-1266), ch. 280, p. 1500, § 16, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-707. Business practices - price limits - collateral.** (1) An insurance producer who writes bail bonds shall not charge a premium or commission of more than the greater of fifty dollars or fifteen percent of the amount of bail furnished. An insurance producer who writes bail bonds shall not assess fees for any bail bond posted by the producer with the court unless the fee is for payment of a bail bond filing charged by a court or law enforcement agency, the fee is for the actual cost of storing collateral in a secure, self-service public storage facility, or the fee is for premium financing.

(2) If an insurance producer who posts the bail bond with the court has issued a disclosure statement in accordance with section 10-2-705 (2) (b), the producer may use collateral received from the defendant or indemnitor to secure the following obligations:

- (a) Compliance with the bond issued on behalf of the principal;
- (b) Any balance due on the premium, commission, or fee for the bail bond; and
- (c) Any actual costs incurred by the insurance producer as a result of issuing the bail bond.



**Source: L. 2012:** Entire section added, (HB 12-1266), ch. 280, p. 1500, § 16, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this section applies to offenses committed and applications submitted on or after July 1, 2012.

## PART 8

### DISCIPLINARY ACTIONS

**10-2-801. Licenses - denial, suspension, revocation, termination - reporting of actions - definitions.** (1) The commissioner may place an insurance producer on probation; suspend, revoke, or refuse to issue, continue, or renew an insurance producer license; order restitution to be paid from an insurance producer; or assess a civil penalty pursuant to section 10-2-804 or 10-3-1108, if, after notice to the insurance producer licensee and after a hearing held in accordance with sections 24-4-104 and 24-4-105, C.R.S., the commissioner finds that as to the licensee or applicant any one or more of the following conditions exist:

(a) Any incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance;

(c) Violation of, or noncompliance with, section 18-13-130, C.R.S., or any insurance law, or violation of any lawful rule, order, or subpoena of the commissioner or of the insurance department of another state;

(d) Obtaining or attempting to obtain any such license through misrepresentation or fraud;

(e) Improperly withholding, misappropriating, or converting to the licensee's or applicant's own use any moneys or property belonging to policyholders, insurers, beneficiaries, or others received in the course of the business of insurance;

(f) Misrepresentation of the terms of any actual or proposed insurance contract or application for insurance;

(g) (I) Conviction of a felony or misdemeanor involving moral turpitude.

(II) For the purposes of this paragraph (g), "moral turpitude" shall include any sexual offense against a child as defined in section 18-3-411, C.R.S.

(h) Commission of any unfair trade practice or fraud;

(i) The use of fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;

(j) Suspension, revocation, or denial of an insurance license in any other state, province, district, or territory;

(k) Forgery of another's name to an application for insurance or to any document related to an insurance transaction;

(l) Cheating on an examination, including, but not limited to, improperly using notes or any other reference material to complete an examination for an insurance license;

(m) Failure to fully meet the licensing requirements;

(n) Knowingly accepting insurance business from a person who is not licensed;

(o) Failing to comply with an administrative or court order imposing a child support obligation;

(p) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; or

(q) Profiting either directly or indirectly from the business of a cash-bonding agent or professional cash-bail agent unless the person profiting is registered as a cash-bonding agent or professional cash-bail agent and the profit is derived from their own business.

(2) In the event that the action by the commissioner is to not renew or continue or to deny an application for a license, the commissioner shall notify the applicant or licensee of the reasons for such action and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license.



(3) A producer or business entity shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days after the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal document.

(4) Within thirty days after the initial pretrial hearing date, a producer or business entity shall report to the commissioner any criminal prosecution of the producer in any jurisdiction. The report shall include a copy of the initial complaint, the order resulting from the hearing, and any other relevant legal documents.

(5) If the commissioner revokes the license of an insurance producer pursuant to this section, or if an insurance producer surrenders its license to avoid discipline by the commissioner, the insurance producer shall not be eligible to apply for a new insurance producer license for two years after the date the license is revoked or surrendered and returned to the commissioner pursuant to section 10-2-802 (1).

(6) For the purposes of this section, "restitution" means benefits or moneys owed due to the regulated entity's violation of this title.

**Source:** L. 93: Entire article R&RE, p. 1371, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1210, § 33, effective January 1, 2002. L. 2008: (5) added, p. 210, § 5, effective March 26; IP(1) amended and (6) added, p. 585, § 1, effective August 5. L. 2012: (1)(c) amended and (1)(q) added, (HB 12-1266), ch. 280, p. 1501, § 17, effective July 1.

**Editor's note:** (1) This section is similar to former §§ 10-2-115, 10-2-116, 10-2-117, and 10-2-212 as they existed prior to 1993.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsection (1)(q) and amending subsection (1)(c) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-2-802. Surrender of license.** (1) An insurance producer license issued under this article, although issued and delivered to the licensee, shall at all times be the property of the state of Colorado and shall be surrendered or returned promptly to the commissioner by personal delivery or by certified or registered mail within fifteen days under any of the following conditions:

- (a) Suspension, revocation, or termination of the license;
- (b) Discontinuation or nonrenewal of the license by the licensee;
- (c) Cessation of residency in this state or, in the case of a nonresident licensee, cessation of residency in the licensee's resident state; or
- (d) Suspension, termination, or revocation of a nonresident licensee's license in the state of residence.

(2) The commissioner may require surrender of an insurance producer license for any proper reason in addition to the grounds stated in subsection (1) of this section.

(3) As to any insurance producer license issued pursuant to this article which is lost, stolen, or destroyed while in the possession of the licensee, the commissioner may accept, in lieu of return of the license, the affidavit of the individual licensee or, in the case of an insurance agency or business entity, the person given responsibility for custody of the license, as to the facts concerning such loss, theft, or destruction.

**Source:** L. 93: Entire article R&RE, p. 1372, § 1, effective January 1, 1995. L. 2001: (3) amended, p. 1212, § 34, effective January 1, 2002.

**Editor's note:** This section is similar to former §§ 10-2-115, 10-2-116, 10-2-117, 10-2-207, and 10-2-215 as they existed prior to 1993.

**10-2-803. Notice of penalty, suspension, termination, revocation, or denial.** (1) The commissioner shall promptly notify any insurance producer licensee regarding any penalty assessed, suspension, revocation, termination, or denial of the licensee's license by the commissioner.

(2) Upon assessment of a penalty, suspension, revocation, or termination of the license of a resident licensee, the commissioner shall notify the central office of the national association of insurance commissioners or its affiliate or subsidiary.

**Source:** L. 93: Entire article R&RE, p. 1373, § 1, effective January 1, 1995. L. 2001: Entire section amended, p. 1212, § 35, effective January 1, 2002.

**10-2-804. Investigation by commissioner.** (1) The commissioner may examine and investigate the business affairs and conduct of every person applying for or holding an insurance producer license under this article to determine whether such person has been or is engaged in any violation of the insurance laws or rules of this state or has engaged in unfair or deceptive acts or practices in any state.

(2) On receipt of any information regarding the possible violation of the insurance laws or rules of this or any other state, or the possible use of unfair or deceptive practices by a person applying for or holding an insurance producer license under this article, the commissioner may require such person to appear and show cause why the commissioner should not discontinue, revoke, suspend, or refuse to issue or renew the person's license and may, upon the failure of such person to show cause, revoke, suspend, or refuse to issue or renew the license.

(3) The license of an insurance agency or business entity may be suspended or revoked or the renewal or continuation refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known to one or more of the partners, officers, or managers acting on behalf of the insurance agency or business entity, including any foreign or domestic entity as defined in section 7-90-102, C.R.S., and that such violation was not reported to the division of insurance nor corrective action taken in relation thereto.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of an insurance producer license, any person who violates any provision of this article may, after hearing, be subject to any remedy or civil penalty of not more than three thousand dollars for each such violation.

(5) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article against any person who is under investigation for or charged with a violation of this article even if the person's license has been surrendered or has lapsed by operation of law.

**Source:** L. 93: Entire article R&RE, p. 1373, § 1, effective January 1, 1995. L. 2001: (2), (3), and (4) amended and (5) added, p. 1212, § 36, effective January 1, 2002. L. 2008: (4) amended, p. 2171, § 2, effective August 5.

**Editor's note:** This section is similar to former § 10-2-214 as it existed prior to 1993.

## PART 9

### REINSURANCE INTERMEDIARY MODEL ACT

**10-2-901. Short title.** This part 9 shall be known and may be cited as the "Reinsurance Intermediary Act".

**Source:** L. 93: Entire article R&RE, p. 1374, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-301 as it existed prior to 1993.

**10-2-902. Definitions.** As used in this part 9, unless the context otherwise requires:

(1) "Controlling person" means any person, firm, association, or corporation that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.



(2) “Insurer” means any person, firm, association, or corporation duly licensed in this state pursuant to applicable provisions of the insurance laws as an insurer.

(3) “Licensed producer” means an insurance producer or reinsurance intermediary licensed in this state pursuant to applicable provisions of the insurance laws.

(4) “Reinsurance intermediary” means a reinsurance intermediary — producer as defined in subsection (6) of this section or a reinsurance intermediary — manager as defined in subsection (5) of this section.

(5) “Reinsurance intermediary — manager”, referred to in this part 9 as “RM”, means any person, firm, association, or corporation that has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for such reinsurer whether known as an RM, manager, or other similar term. Notwithstanding the provisions of this subsection (5), the following persons shall not be considered an RM, with respect to such reinsurer, for the purposes of this part 9:

(a) An employee of the reinsurer;

(b) A United States manager of the United States branch of an alien reinsurer;

(c) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer and who is under common control with the reinsurer subject to the provisions of part 8 of article 3 of this title and whose compensation is not based on the volume of premiums written;

(d) The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and are subject to examination by the commissioner or the equivalent insurance regulatory authority of the state in which the manager’s principal business office is located.

(6) “Reinsurance intermediary — producer”, referred to in this part 9 as “RP”, means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation, that solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(7) “Reinsurer” means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance laws as an insurer with the authority to assume reinsurance.

(8) “To be in violation” means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this part 9.

**Source:** L. 93: Entire article R&RE, p. 1374, § 1, effective January 1, 1995. L. 2009: (4) to (6) amended, (SB 09-292), ch. 369, p. 1941, § 11, effective August 5.

**Editor’s note:** This section is similar to former § 10-2-302 as it existed prior to 1993.

**10-2-903. Licensure.** (1) No person, firm, association, or corporation shall act as an RP in this state if the RP maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless such RP is a licensed producer in this state; or

(b) In another state, unless such RP is a licensed producer in this state or another state having a law substantially similar to this part 9, or such RP is licensed in this state as a nonresident reinsurance intermediary.

(2) No person, firm, association, or corporation shall act as an RM:

(a) For a reinsurer domiciled in this state, unless such RM is a licensed producer in this state;

(b) In this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless such RM is a licensed producer in this state;

(c) In another state for a nondomestic insurer, unless such RM is a licensed producer in this state or another state having a law substantially similar to this part 9 or such person is licensed in this state as a nonresident reinsurance intermediary.



(3) The commissioner may require an RM subject to subsection (2) of this section to:

(a) File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part 9. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(b) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this part 9 for designation of service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, any one named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any individual specified in this subsection (5) has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to the provisions of part 2 of article 72 of title 24, C.R.S.

(6) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

**Source: L. 93:** Entire article R&RE, p. 1375, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-303 as it existed prior to 1993.

#### **10-2-904. Required contract provisions - reinsurance intermediary — producers.**

(1) Transactions between an RP and the insurer such RP represents shall only be entered into pursuant to a written authorization specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that:

(a) The insurer may terminate the RP's authority at any time;

(b) The RP shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the RP, and remit all funds due to the insurer within thirty days of receipt;

(c) All funds collected for the insurer's account shall be held by the RP in a fiduciary capacity in a bank which is a qualified United States financial institution;

(d) The RP shall comply with section 10-2-905;

(e) The RP shall comply with the written standards established by the insurer for the cession or retrocession of all risks;

(f) The RP shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

**Source: L. 93:** Entire article R&RE, p. 1377, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-304 as it existed prior to 1993.

**10-2-905. Books and records - reinsurance intermediary — producers.** (1) For at least ten years after expiration of each contract of reinsurance transacted by the RP, the RP shall keep a complete record for each transaction showing:

- (a) The type of contract, limits, underwriting restrictions, classes, or risks and territory;
  - (b) The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;
  - (c) The reporting and settlement requirements of balances;
  - (d) The rate used to compute the reinsurance premium;
  - (e) The names and addresses of assuming reinsurers;
  - (f) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RP;
  - (g) Related correspondence and memoranda;
  - (h) Proof of placement;
  - (i) Details regarding retrocessions handled by the RP including the identity of retrocessionaires and the percentage of each contract assumed or ceded;
  - (j) Financial records, including but not limited to premium and loss accounts; and
  - (k) When the RP procures a reinsurance contract on behalf of a licensed ceding insurer:
    - (I) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
    - (II) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.
- (2) The insurer shall have access and the right to copy and audit all accounts and records maintained by the RP related to its business in a form usable by the insurer.

**Source: L. 93:** Entire article R&RE, p. 1377, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-305 as it existed prior to 1993.

**10-2-906. Duties of insurers utilizing the services of a reinsurance intermediary — producer.** (1) An insurer shall not engage the services of any person, firm, association, or corporation to act as an RP on its behalf unless such person is licensed as required by section 10-2-903 (1).

(2) An insurer may not employ an individual who is employed by an RP with which it transacts business, unless such RP is under common control with the insurer and subject to the provisions of part 8 of article 3 of this title.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each RP with which it transacts business.

**Source: L. 93:** Entire article R&RE, p. 1378, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-306 as it existed prior to 1993.

**10-2-907. Required contract provisions - reinsurance intermediary — managers.** (1) Transactions between an RM and the reinsurer such RM represents shall only be entered into pursuant to a written contract specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, contain provisions that incorporate all of the following:



(a) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.

(b) The RM shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

(c) All funds collected for the reinsurer's account shall be held by the RM in a fiduciary capacity in a bank that is a qualified United States financial institution as defined in section 10-1-102 (17). The RM may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that such RM represents.

(d) For at least ten years after expiration of each contract of reinsurance transacted by the RM, the RM shall keep a complete record for each transaction showing:

(I) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(II) The period of coverage, including effective and expiration dates, cancellation provisions, notice required for cancellation, and disposition of outstanding reserves on covered risks;

(III) The reporting and settlement requirements of balances;

(IV) The rate used to compute the reinsurance premium;

(V) The names and addresses of reinsurers;

(VI) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;

(VII) Related correspondence and memoranda;

(VIII) Proof of placement;

(IX) Details regarding retrocessions handled by the RM, as permitted by section 10-2-909 (4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(X) Financial records, including but not limited to premium and loss accounts; and

(XI) When the RM places a reinsurance contract on behalf of a ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative;

(e) The reinsurer shall have access and the right to copy all accounts and records maintained by the RM related to such RM's business in a form usable by the reinsurer;

(f) The contract cannot be assigned in whole or in part by the RM;

(g) The RM shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;

(h) The contract sets forth the rates, terms, and purposes of commissions, charges, and other fees which the RM may levy against the reinsurer;

(i) (I) If the contract permits the RM to settle claims on behalf of the reinsurer, all claims shall be reported to the reinsurer in a timely manner.

(II) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(B) Involves a coverage dispute;

(C) May exceed the RM claims settlement authority;

(D) Is open for more than six months; or

(E) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(III) All claim files shall be the joint property of the reinsurer and RM; however, upon an order of liquidation of the reinsurer, such files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis;



(IV) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(j) If the contract provides for a sharing of interim profits by the RM, that such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business or a later period set by the commissioner for specified lines of insurance and not until the adequacy of reserves on remaining claims has been verified pursuant to section 10-2-909 (3);

(k) The RM shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

(l) The reinsurer shall periodically and at least semiannually conduct an on-site review of the underwriting and claims processing operations of the RM;

(m) The RM shall disclose to the reinsurer any relationship such RM has with any insurer prior to ceding or assuming any business with such insurer pursuant to the contract;

(n) The acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

**Source: L. 93:** Entire article R&RE, p. 1378, § 1, effective January 1, 1995. **L. 2003:** (1)(c) amended, p. 615, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-2-307 as it existed prior to 1993.

**10-2-908. Prohibited acts.** (1) The RM shall not:

(a) Bind retrocessions on behalf of the reinsurer; except that the RM may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(b) Commit the reinsurer to participate in reinsurance syndicates;

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;

(d) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(e) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be promptly forwarded to the reinsurer.

(f) Jointly employ an individual who is employed by the reinsurer;

(g) Appoint a sub-RM.

**Source: L. 93:** Entire article R&RE, p. 1381, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-308 as it existed prior to 1993.

**10-2-909. Duties of reinsurers utilizing the services of a reinsurance intermediary — manager.** (1) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as an RM on its behalf unless such person is licensed as required by section 10-2-903 (2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which such reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the RM. This opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

(5) Within thirty days of termination of a contract with an RM, the reinsurer shall provide written notification of such termination to the commissioner.

(6) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its RM. This subsection (6) shall not apply to relationships governed by part 8 of article 3 of this title.

**Source: L. 93:** Entire article R&RE, p. 1382, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-309 as it existed prior to 1993.

**10-2-910. Examination authority.** (1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) An RM may be examined as if it were the reinsurer.

**Source: L. 93:** Entire article R&RE, p. 1382, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-310 as it existed prior to 1993.

**10-2-911. Penalties and liabilities.** (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with article 4 of title 24, C.R.S., to be in violation of any provision of this part 9 shall:

(a) For each separate violation, pay a penalty in an amount not to exceed five thousand dollars;

(b) Be subject to revocation or suspension of its license; and

(c) If a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

(2) The decision, determination, or order of the commissioner pursuant to subsection (1) of this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in this title.

(4) Nothing contained in this part 9 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to such persons.

**Source: L. 93:** Entire article R&RE, p. 1382, § 1, effective January 1, 1995.

**Editor's note:** (1) This section is similar to former § 10-2-311 as it existed prior to 1993.

(2) In 2006, the provisions within subsection (1) were relettered to return the subsection to its original form as adopted in House Bill 93-1270.

**10-2-912. Rules and regulations.** The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this part 9.

**Source: L. 93:** Entire article R&RE, p. 1382, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-312 as it existed prior to 1993.



## PART 10

## MANAGING GENERAL AGENTS ACT

**10-2-1001. Short title.** This part 10 shall be known and may be cited as the “Managing General Agents Act”.

**Source: L. 93:** Entire article R&RE, p. 1383, § 1, effective January 1, 1995.

**Editor’s note:** This section is similar to former § 10-2-401 as it existed prior to 1993.

**10-2-1002. Definitions.** As used in this part 10, unless the context otherwise requires:

(1) “Insurer” means any person, firm, association, or corporation duly licensed in this state as an insurance company pursuant to the applicable provisions of the insurance laws.

(2) (a) “Managing general agent”, referred to in this part 10 as “MGA”, means any person, firm, association, or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or both of the following:

- (I) Adjusts or pays claims in excess of an amount determined by the commissioner; or
- (II) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), the following persons shall not be considered an MGA for the purposes of this part 10:

- (I) An employee of the insurer;
- (II) A United States manager of the United States branch of an alien insurer;
- (III) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer and who is under common control with the insurer subject to the provisions of part 8 of article 3 of this title and whose compensation is not based on the volume of premiums written;
- (IV) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(3) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**Source: L. 93:** Entire article R&RE, p. 1383, § 1, effective January 1, 1995.

**Editor’s note:** This section is similar to former § 10-2-402 as it existed prior to 1993.

**10-2-1003. Licensure.** (1) No person, firm, association, or corporation shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed producer in this state.

(2) No person, firm, association, or corporation shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as a producer in this state (such license may be a nonresident license) pursuant to the provisions of this part 10.

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the MGA to maintain an errors and omissions policy.

**Source: L. 93:** Entire article R&RE, p. 1384, § 1, effective January 1, 1995.

**Editor’s note:** This section is similar to former § 10-2-403 as it existed prior to 1993.



**10-2-1004. Required contract provisions.** (1) No person, firm, association, or corporation acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, which specifies the division of such responsibilities, and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(b) The MGA shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the insurer's account shall be held by the MGA in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the MGA shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner. Such records shall be retained for a period of five years commencing no later than the effective date of the last financial examination of the insurer.

(e) The contract may not be assigned in whole or part by the MGA.

(f) (I) Appropriate underwriting guidelines which shall include:

- (A) The maximum annual premium volume;
- (B) The basis of the rates to be charged;
- (C) The types of risks which may be written;
- (D) Maximum limits of liability;
- (E) Applicable exclusions;
- (F) Territorial limitations;
- (G) Policy cancellation provisions; and
- (H) The maximum policy period.

(II) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

(g) (I) If the contract permits the MGA to settle claims on behalf of the insurer, all claims shall be reported to the company in a timely manner.

(II) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

- (A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;
- (B) Involves a coverage dispute;
- (C) May exceed the MGA's claims settlement authority;
- (D) Is open for more than six months; or
- (E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(III) All claim files shall be the joint property of the insurer and the MGA; however, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate. The MGA shall have reasonable access to and the right to copy the files on a timely basis.

(IV) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data;

(i) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to

the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 10-2-1005.

(2) The MGA shall not:

(a) Bind reinsurance or retrocessions on behalf of the insurer; except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which such producer is appointed;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer.

(f) Permit its subproducer to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed with the insurer;

(h) Appoint a sub-MGA.

**Source: L. 93:** Entire article R&RE, p. 1384, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-404 as it existed prior to 1993.

**10-2-1005. Duties of insurers.** (1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(2) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(3) The insurer shall periodically and at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(5) Within thirty days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the commissioner. Notices of appointment of an MGA shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer has become an MGA as defined in section 10-2-1002 (2). If the insurer determines that a producer has become an MGA pursuant to section 10-2-1002 (2), the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer shall fully comply with the provisions of this part 10 within thirty days.

(7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its MGA's. This subsection (7) shall not apply to relationships governed by part 8 of article 3 of this title.

**Source: L. 93:** Entire article R&RE, p. 1387, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-405 as it existed prior to 1993.



**10-2-1006. Examination authority.** The acts of the MGA are considered to be the acts of the insurer on whose behalf the MGA is acting. An MGA may be examined as if said MGA were the insurer.

**Source: L. 93:** Entire article R&RE, p. 1388, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-406 as it existed prior to 1993.

**10-2-1007. Penalties and liabilities.** (1) If the commissioner finds, after a hearing conducted in accordance with article 4 of title 24, C.R.S., that any person has violated any provision of this part 10, the commissioner may order:

(a) For each separate violation, a penalty in an amount not to exceed five thousand dollars;

(b) Revocation or suspension of the producer's license; and

(c) The MGA to reimburse the insurer, the rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this part 10 committed by the MGA.

(2) The decision, determination, or order of the commissioner pursuant to subsection (1) of this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this part 10 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

**Source: L. 93:** Entire article R&RE, p. 1388, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-407 as it existed prior to 1993.

**10-2-1008. Rules and regulations.** The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this part 10.

**Source: L. 93:** Entire article R&RE, p. 1388, § 1, effective January 1, 1995.

**Editor's note:** This section is similar to former § 10-2-408 as it existed prior to 1993.

## PART 11

### EFFECTIVE DATE - APPLICABILITY

**10-2-1101. Effective date - applicability.** This article shall take effect January 1, 1995. Insurance agent and broker licenses issued pursuant to part 2 of this article prior to said date shall expire at such time as the commissioner shall determine by rule promulgated under the authority of this article. The holders of such licenses may obtain comparable licenses under this article by complying with the rules promulgated by the commissioner under the authority of this article.

**Source: L. 93:** Entire article R&RE, p. 1389, § 1, effective January 1, 1995.



## REGULATION OF INSURANCE COMPANIES

### ARTICLE 3

#### Regulation of Insurance Companies

##### PART 1

##### GENERAL

		10-3-127.	Domicile of nonprofit hospital, medical-surgical, and health services corporations.
		10-3-128.	Domestic insurer - requirement to maintain offices in this state.
10-3-101.	Formation of insurance companies.	10-3-129.	Prohibition - display of social security number - insurance companies.
10-3-102.	Purpose of organization or admittance.	10-3-130.	Certificate of authority application process - tracking compliance with uniform process.
10-3-103.	Names of companies.	10-3-131.	Acts of producers - responsibility of insurer - definitions.
10-3-104.	Unauthorized companies - penalties.		
10-3-105.	Certificate of authority to do business - companies prohibited - definitions.		
10-3-106.	Deemed incorporated under corporation law.		
10-3-107.	Appointment of registered agent - commissioner agent for service of process.		
10-3-108.	File duly certified copy of charter.		
10-3-109.	Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.		
10-3-110.	Remuneration of company officials. (Repealed)		
10-3-111.	Violations - penalty.		
10-3-112.	Directors - terms - election - conflicts of interest - recovery of profits.		
10-3-113.	Increase of capital.		
10-3-114.	Violations - penalty.		
10-3-115.	License required of foreign companies. (Repealed)		
10-3-116.	Sale of stock without license - penalty. (Repealed)		
10-3-117.	License automatically extended - when.		
10-3-118.	Reinsurance - conditions - credit for reinsurance.		
10-3-119.	Application for receivership. (Repealed)		
10-3-120.	Investments of officers, directors, and principal stockholders.		
10-3-121.	Regulation of proxies, consents, or authorizations.		
10-3-122.	Duties of foreign companies.		
10-3-123.	Assessment accident associations.		
10-3-124.	Advertisement for insurance - requirement. (Repealed)		
10-3-125.	Redomestication of foreign insurers.		
10-3-126.	Alien insurers.		

##### PART 2

##### FINANCIAL AFFAIRS

10-3-201.	Cash capital - guaranty fund - deposit.
10-3-202.	Surplus ascertained - disposition of.
10-3-203.	Additional deposits - withdrawals.
10-3-204.	Payment of dividends.
10-3-205.	Manner of paying surplus.
10-3-206.	Security deposits - certificates.
10-3-207.	Fees paid by insurance companies.
10-3-207.5.	Funding for insurance fraud investigations and prosecutions - creation of fund. (Repealed)
10-3-208.	Financial statements.
10-3-209.	Tax on premiums collected - exemptions - penalties.
10-3-210.	Deposit and safekeeping of securities.
10-3-211.	Deposit only admitted assets.
10-3-212.	Insolvency or impairment of stock insurance company.
10-3-213.	Investments eligible as admitted assets.
10-3-214.	Quantitative investment limitations - manner of applying.
10-3-215.	Bonds and other evidences of indebtedness.
10-3-215.5.	Investments in medium- and lower-grade obligations.
10-3-216.	First liens on real property.
10-3-217.	Federally guaranteed or insured real estate loans.
10-3-218.	Real estate for use in company's business.
10-3-219.	Real estate acquired in satisfaction of indebtedness.

10-3-220.	Real estate for production of income.
10-3-221.	Tangible personal property for production of income. (Repealed)
10-3-222.	Policy loans. (Repealed)
10-3-223.	Accounts in building or savings and loan associations. (Repealed)
10-3-224.	Time deposits. (Repealed)
10-3-225.	Transportation equipment interests.
10-3-226.	Stocks.
10-3-227.	Stock for purpose of reinsurance, consolidation, or merger.
10-3-228.	Collateral loans.
10-3-228.5.	Securities lending - repurchase - reverse repurchase - dollar roll transactions.
10-3-229.	Investments for purposes of compliance in other jurisdictions.
10-3-230.	Additional investments.
10-3-231.	Valuation of investments.
10-3-232.	Liens for certain purposes permitted.
10-3-233.	Disposition of certain real estate.
10-3-234.	Approval and record of investments.
10-3-235.	Certain admitted assets deemed securities for deposit purposes.
10-3-236.	Assets acquired through merger, consolidation, or reinsurance.
10-3-237.	Assets acquired under prior law.
10-3-238.	Refunds.
10-3-239.	Subordinated indebtedness.
10-3-240.	Approval of investments.
10-3-241.	Prohibited investments. (Repealed)
10-3-242.	Money market funds.
10-3-243.	Derivative transactions - definitions - restrictions.

## PART 3

## UNIFORM GUARANTY DEPOSITS

10-3-301.	Definitions.
10-3-302.	Deposits required - when.
10-3-303.	Deposits with commissioner.
10-3-304.	Depositaries - responsibility.
10-3-305.	Rights of depositors.

10-3-306.	Release of deposits.
10-3-307.	Commissioner order release.

## PART 4

## DELINQUENCIES

10-3-401.	Legislative declaration.
10-3-402.	Definitions.
10-3-403.	Scope of part 4.
10-3-404.	Determination of delinquency - procedure.
10-3-405.	Direct supervision.
10-3-406.	Protest of finding of delinquency.
10-3-407.	Costs of direct supervision.
10-3-408.	Conservatorship. (Repealed)
10-3-409.	Protest of order of conservatorship. (Repealed)
10-3-410.	Costs of conservatorship. (Repealed)
10-3-411.	Penalties for noncompliance.
10-3-412.	Review of action while under direct supervision.
10-3-413.	Appeal from final determination or order of commissioner.
10-3-414.	Nondisclosure of reports and evidence during period of direct supervision or conservatorship.

## PART 5

INSURERS' REHABILITATION  
AND LIQUIDATION

10-3-501.	Legislative declaration - intents and purposes.
10-3-502.	Definitions.
10-3-503.	Persons covered.
10-3-504.	Jurisdiction - venue.
10-3-504.5.	Application for receivership.
10-3-505.	Injunctions - orders.
10-3-506.	Cooperation of officers, owners, and employees.
10-3-507.	Continuation of delinquency proceedings.
10-3-508.	Condition on release from delinquency proceedings.
10-3-509.	Court's seizure order.
10-3-510.	Confidentiality of hearings.
10-3-511.	Grounds for rehabilitation.
10-3-512.	Rehabilitation orders.
10-3-513.	Powers and duties of rehabilitator.
10-3-514.	Actions by and against rehabilitator.

- |             |  |           |  |
|-------------|--|-----------|--|
| 10-3-514.5. | Immunity and indemnification of receiver and employees - applicability.    |           | insurers domiciled in this state.                                    |
| 10-3-515.   | Termination of rehabilitation.   | 10-3-555. | Claims of residents against insurers domiciled in reciprocal states. |
| 10-3-516.   | Grounds for liquidation.   | 10-3-556. | Attachment, garnishment, and levy of execution.                      |
| 10-3-517.   | Liquidation orders.  | 10-3-557. | Interstate priorities.   |
| 10-3-518.   | Continuation of coverage.  | 10-3-558. | Subordination of claims for noncooperation.                          |
| 10-3-519.   | Dissolution of insurer.  | 10-3-559. | Severability.  |
| 10-3-520.   | Powers of liquidator.  |           |  |
| 10-3-521.   | Notice to creditors and others.  |           |  |
| 10-3-522.   | Duties of agents.  |           |  |
| 10-3-523.   | Actions by and against liquidator.   |           |  |
| 10-3-524.   | Collection and listing of assets.  |           |  |
| 10-3-525.   | Fraudulent transfers prior to petition.                                    |           |  |
| 10-3-526.   | Fraudulent transfer after petition.  |           |  |
| 10-3-527.   | Voidable preferences and liens.  |           |  |
| 10-3-528.   | Claims of holders of void or voidable rights.                              |           |  |
| 10-3-529.   | Setoffs - effective date - applicability.                                  |           |  |
| 10-3-530.   | Assessments.   |           |  |
| 10-3-531.   | Reinsurers' liability.   |           |  |
| 10-3-532.   | Recovery of premiums owed.   |           |  |
| 10-3-533.   | Domiciliary liquidator's proposal to distribute assets.                    |           |  |
| 10-3-533.5. | Sale of insolvent insurer as a going concern.                              |           |  |
| 10-3-534.   | Filing of claims.  |           |  |
| 10-3-535.   | Proof of claim.  |           |  |
| 10-3-536.   | Special claims.  |           |  |
| 10-3-537.   | Special provisions for third-party claims.                                 |           |  |
| 10-3-538.   | Disputed claims.   |           |  |
| 10-3-539.   | Claims of surety.  |           |  |
| 10-3-540.   | Secured creditors' claims.   |           |  |
| 10-3-541.   | Priority of distribution - definitions.                                    |           |  |
| 10-3-542.   | Liquidator's recommendations to the court.                                 |           |  |
| 10-3-543.   | Distribution of assets.  |           |  |
| 10-3-544.   | Unclaimed and withheld funds.  |           |  |
| 10-3-545.   | Termination of proceedings.  |           |  |
| 10-3-546.   | Reopening liquidation.   |           |  |
| 10-3-547.   | Disposition of records during and after termination of liquidation.        |           |  |
| 10-3-548.   | External audit of receiver's books.  |           |  |
| 10-3-549.   | Conservation of property of foreign or alien insurers found in this state. |           |  |
| 10-3-550.   | Liquidation of property of foreign or alien insurers found in this state.  |           |  |
| 10-3-551.   | Domiciliary liquidators in other states.                                   |           |  |
| 10-3-552.   | Ancillary formal proceedings.  |           |  |
| 10-3-553.   | Ancillary summary proceedings.   |           |  |
| 10-3-554.   | Claims of nonresidents against   |           |  |

## PART 6

EXCHANGE OF INSURANCE  
SECURITIES ACT

- |           |  |
|-----------|--|
| 10-3-601. | Short title.   |
| 10-3-602. | Exchange of securities.  |
| 10-3-603. | Acquiring corporation - definition.  |
| 10-3-604. | Procedure for exchange.  |
| 10-3-605. | Filing plan of exchange.   |
| 10-3-606. | Effect of exchange.  |
| 10-3-607. | Authorized insurance business and regulatory authority.                    |
| 10-3-608. | Domestic company and acquiring corporation separate and distinct entities. |
| 10-3-609. | Examination.   |
| 10-3-610. | Application of this part 6.  |

## PART 7

## REINSURANCE

- |           |   |
|-----------|---|
| 10-3-701. | Right to reinsure.  |
| 10-3-702. | Procedure.  |
| 10-3-703. | Reinsurance of less than all or substantial portion of risks. |
| 10-3-704. | Prohibition.  |
| 10-3-705. | Remuneration.   |
| 10-3-706. | Policy reserve deposits.                                      |
| 10-3-707. | Exception.  |
| 10-3-708. | Withdrawal from the state.                                    |
| 10-3-709. | Construction with other laws.                                 |

## PART 8

INSURANCE HOLDING  
COMPANY SYSTEMS

- |             |   |
|-------------|---|
| 10-3-801.   | Definitions.  |
| 10-3-802.   | Subsidiaries of insurers.                                       |
| 10-3-803.   | Acquisition of control of or merger with domestic insurer.      |
| 10-3-803.5. | Standards for determining whether competition will be lessened. |
| 10-3-804.   | Registration of insurers.                                       |
| 10-3-805.   | Standards.  |
| 10-3-806.   | Examination.  |
| 10-3-807.   | Confidential treatment.   |



10-3-808.	Rules and regulations.
10-3-809.	Injunctions - prohibitions against voting securities - sequestration of voting securities.
10-3-810.	Criminal proceedings - civil penalties.
10-3-811.	Delinquencies.
10-3-812.	Revocation, suspension, or nonrenewal of insurer's license.
10-3-813.	Judicial review - mandamus.
10-3-814.	Recovery of distributions or payments.

## PART 9

## UNAUTHORIZED INSURANCE

10-3-901.	Short title.
10-3-902.	Legislative declaration.
10-3-903.	Definition of transacting insurance business.
10-3-903.5.	Jurisdiction over providers of health care benefits.
10-3-904.	Commissioner may enjoin unauthorized company.
10-3-904.5.	Emergency cease-and-desist orders - issuance.
10-3-904.6.	Emergency cease-and-desist orders - hearings - judicial review - violations.
10-3-904.7.	Failure to pay penalties or restitution.
10-3-905.	Service of process upon unauthorized company.
10-3-906.	Validity of insurance contracts - liability under insurance contract.
10-3-907.	Investigation and disclosure of insurance contracts.
10-3-908.	Reporting of unauthorized insurance.
10-3-909.	Unauthorized insurance premium tax.
10-3-910.	Application of this part 9.

## PART 10

UNAUTHORIZED INSURERS  
PROCESS ACT

10-3-1001.	Short title.
10-3-1002.	Legislative declaration.
10-3-1003.	Service of process upon unauthorized insurer.
10-3-1004.	Defense of action by unauthorized insurer.
10-3-1005.	Attorney fees.

## PART 11

UNFAIR COMPETITION -  
DECEPTIVE PRACTICES

10-3-1101.	Legislative declaration.
10-3-1102.	Definitions.
10-3-1103.	Unfair methods of competition - unfair or deceptive acts or practices - prohibited.
10-3-1104.	Unfair methods of competition - unfair or deceptive acts or practices.
10-3-1104.5.	HIV testing - legislative declaration - definitions - requirements for testing - limitations on disclosure of test results.
10-3-1104.6.	Genetic information - limitations on disclosure of information - liability - definitions - legislative declaration.
10-3-1104.7.	Genetic testing - legislative declaration - definitions - limitations on disclosure of information - liability.
10-3-1104.8.	Domestic abuse discrimination - prohibited.
10-3-1105.	Favored agent or insurer - coercion of debtors.
10-3-1106.	Power of commissioner.
10-3-1107.	Hearings.
10-3-1108.	Orders.
10-3-1109.	Penalty for violation of cease-and-desist orders.
10-3-1110.	Rules.
10-3-1111.	Provisions of part 11 additional to existing law.
10-3-1112.	Immunity from prosecution.
10-3-1113.	Information to trier of fact in civil actions.
10-3-1114.	Construction of part 11.
10-3-1115.	Improper denial of claims - prohibited - definitions - severability.
10-3-1116.	Remedies for unreasonable delay or denial of benefits - required contract provision - frivolous actions - severability.

## PART 12

SYSTEMS FOR HOLDING AND  
TRANSFERRING SECURITIES

10-3-1201.	Legislative declaration.
10-3-1202.	Definitions.
10-3-1203.	Book-entry system.

## PART 13

## PART 14

MODEL QUALITY REPLACEMENT  
PARTS ACT

## MODEL RISK RETENTION ACT

10-3-1301.	Short title.
10-3-1302.	Legislative declaration.
10-3-1303.	Definitions.
10-3-1304.	Identification of parts.
10-3-1305.	Disclosure.
10-3-1306.	Unfair and deceptive acts.
10-3-1307.	Liability.

10-3-1401.	Short title.
10-3-1402.	Purpose.
10-3-1403.	Authority of commissioner.

## PART 1

## GENERAL

**10-3-101. Formation of insurance companies.** (1) Whenever any number of persons associate to form an insurance company for any of the purposes named in section 10-3-102, they shall submit articles of incorporation to the commissioner and attorney general for examination. After being approved by the commissioner and the attorney general, the articles shall be filed in the office of the secretary of state, who shall issue a certificate of incorporation. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner. Any filings made pursuant to this subsection (1) may be in an electronic format.

(2) When not less than the amount required by section 10-3-201 has been paid in by the incorporators and deposited with the commissioner, as provided for in this title (except article 15) and article 14 of title 24, C.R.S., the commissioner shall cause an examination to be made either by the commissioner or some disinterested person especially appointed by the commissioner for the purpose, who shall certify that said provisions have been complied with by said company, as far as applicable thereto. Such certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such company a certified copy thereof, which, together with a copy of the articles of incorporation, shall be filed in the office of the recorder of deeds of the county wherein the company is to be located, before the authority to commence business is granted. Any filings required to be made with the commissioner pursuant to this subsection (2) may be in an electronic format.

(3) Whenever any such corporation thereafter desires to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, finds the same to be legally adopted and in due legal form and not in conflict with the provisions of law governing such companies, then and not otherwise such certificate of amendment shall be filed with the secretary of state. Filings required pursuant to this subsection (3) may be in an electronic format.

(4) To supplement the examination powers of the commissioner, as provided in this article, the commissioner may request or require a company, entity, or applicant, or the company, entity, or applicant may make a request to the commissioner, to be examined by independent examiners certified by the society of financial examiners, actuaries who are members of the American academy of actuaries, or other qualified loss reserve specialists, independent risk managers, independent certified public accountants, or other qualified examiners of insurance companies deemed competent by the commissioner, or any combination of such qualified persons. The commissioner may also accept as part of his examination reports made by any qualified person pursuant to this subsection (4). Neither such persons nor members of their immediate families shall be officers of, connected with, or financially interested in the entity, company, or applicant being examined other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination, investigation, or hearing. The commissioner shall establish guidelines for assuring the neutrality of those persons to be authorized to supplement the



examination procedures authorized in this article. The reasonable expenses and charges of such persons so retained or designated shall be paid directly by the company, entity, or applicant to any such outside authorized examiner.

**Source:** L. 13: p. 345, § 30. L. 15: p. 269, § 1. L. 21: p. 455, § 4. C.L. § 2501. CSA: C. 87, § 28. L. 41: p. 501, § 1. CRS 53: § 72-1-42. C.R.S. 1963: § 72-1-42. L. 89: (4) added, p. 432, § 2, effective June 7. L. 91: (4) amended, p. 1242, § 3, effective July 1. L. 92: (2) amended, p. 1535, § 22, effective May 20. L. 2004: (1), (2), and (3) amended, p. 1058, § 3, effective July 1. L. 2012: (2) amended, (HB 12-1266), ch. 280, p. 1501, § 18, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For the necessity of certificate of authority to do insurance business, see § 10-3-105.

### ANNOTATION

This section is distinct from the law governing the incorporation of other companies, and this section rules the organization of insurance companies wherever in conflict with other provisions relating to the incorporation of stock companies. Greiger v. Salzer, 63 Colo. 167, 165 P. 240 (1917).

It was enacted to safeguard the rights of those taking policies in insurance companies and beneficiaries thereunder. The legislative idea manifestly was to prevent any company from lightly and prematurely assuming liability imposed by the issuance of policies of insurance. Greiger v. Salzer, 63 Colo. 167, 165 P. 240 (1917).

Under this section no company may issue a policy until after the statutory conditions have

been complied with. Greiger v. Salzer, 63 Colo. 167, 165 P. 240 (1917).

The "business" which an insurance company may not transact until this section is complied with is clearly the business for which it was created, i.e., the writing of insurance. Not only is this the reasonable interpretation of the section itself but that interpretation is put beyond question by § 10-3-105, which limits the prohibition to "insurance business". Colo. Life Ins. Co. v. Madden, 73 Colo. 504, 216 P. 551 (1923).

Until payment of the deposit required by this section, a company organized as an insurance company has no legal capacity. Lucero v. Colo. Life Ins. Co., 67 Colo. 322, 184 P. 379 (1919).

**10-3-102. Purpose of organization or admittance.** (1) Any domestic insurance company having the required amount of capital or guaranty fund and surplus, when permitted by its articles of incorporation or charter, may be authorized and licensed by the commissioner to make insurance under one of the following paragraphs:

(a) To make insurance or reinsurance on dwelling houses, stores, and all kinds of buildings and household furniture, and other property against loss or damage, including loss of use or occupancy, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, and by explosion whether fire ensues or not; also against loss or damage by water or other fluid to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of other conduits or containers or by waters entering through leaks or openings in buildings and of water pipes, and against accidental injury to such sprinklers, pumps, apparatus, conduits, containers, or water pipes, and upon vessels, boats, cargoes, goods, merchandise, freights, and other property against loss or damage by any of the risks of lake, river, canal, inland, and ocean navigation and transportation, including all personal property floater risks and including insurance upon automobiles and all types of aircraft, whether stationary or being operated under their own power, which include all of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to persons and to property resulting from the maintenance and use of automobiles, and airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, or malicious mischief, or the wrongful conversion, disposal, or



concealment of automobiles, and all types of aircraft, whether held under conditional sale contract or subject to chattel mortgages or any one or more of such hazards;

(b) To make insurance or reinsurance upon the lives of persons, and every insurance pertaining thereto or connected therewith, including health and accident insurance, and to grant, purchase, or dispose of annuities, group annuities, unallocated annuities, guaranteed investment contracts, and funding agreement contracts;

(c) To make any of the following kinds of insurance, or reinsurance:

(I) Upon the health of persons;

(II) Against injury, disablement, or death of persons, resulting from traveling or from accidents by land or water;

(III) Upon the lives of horses, cattle, and other livestock;

(IV) Upon plate glass against breakage;

(V) Upon steam boilers, flywheels, and other forms of liability insurance, against explosion and against loss by damage to life or property resulting therefrom;

(VI) Against loss by burglary or theft or both;

(VII) To engage in the business of suretyship, and guaranteeing the fidelity of persons holding places of trust, public or private;

(VIII) Full coverage for motor vehicles;

(IX) All forms of casualty insurance, including all personal property floater risks.

(d) To make insurance or reinsurance upon any of the risks set forth in paragraphs (a) and (c) of this subsection (1).

(e) To make title insurance or reinsurance.

(2) Any foreign or alien insurance company having the required amount of capital or guaranty fund, surplus, and deposit, when permitted by its articles of incorporation or charter and by the proper insurance supervisory authority of its domiciliary jurisdiction, may be authorized and licensed by the commissioner to make insurance under any one of the subsections of this section if otherwise qualified according to law.

(3) No foreign, alien, or domestic insurance company, excluding life insurance companies and title insurance companies, shall expose itself to loss in an amount exceeding ten percent of its paid-up capital or guaranty fund and surplus on any one risk or hazard, unless the same is reinsured through an insurance company which is licensed or accredited in this state, or otherwise through an insurance company acceptable to the commissioner.

(4) Any insurance company authorized to transact the business of title insurance under section 72-1-41 (4) (i), C.R.S. 1963, prior to July 1, 1969, shall not, by reason of the provisions of this part 1, be prohibited from transacting said business.

**Source:** L. 13: p. 344, § 29. C.L. § 2500. CSA: C. 87, § 27. L. 47: p. 597, § 1. L. 51: p. 481, § 1. CRS 53: § 72-1-41. L. 57: p. 458, § 1. C.R.S. 1963: § 72-1-41. L. 69: p. 527, §§ 3, 4. L. 92: (3) amended, p. 1423, § 3, effective July 1. L. 2000: (1)(b) amended, p. 1729, § 1, effective August 15.

**Cross references:** For the nonapplicability of subsection (3) to pure captive insurance companies, see § 10-6-130 (1).

## ANNOTATION

**Annuity contracts are not wagering contracts** except in the rough sense that insurance is a wager. *Rishel v. Pacific Mut. Life Ins. Co.*, 78 F.2d 881 (10th Cir. 1935).

**This section expressly authorizes insurance companies to grant annuities.** *Rishel v. Pacific Mut. Life Ins. Co.*, 78 F.2d 881 (10th Cir. 1935).

**An annuity contract is not rendered impossible of performance** because the annuitant, alive when the contract was made, is killed or dies before payments are due thereon. *Rishel v.*

*Pacific Mut. Life Ins. Co.*, 78 F.2d 881 (10th Cir. 1935).

**Annuity contracts, like other contracts, may be avoided if the annuitant is of unsound mind** or for fraud or duress or material misrepresentations. *Rishel v. Pacific Mut. Life Ins. Co.*, 78 F.2d 881 (10th Cir. 1935).

**An annuity contract cannot be avoided because the annuitant dies before attaining his average expectancy** or because it develops that his health was so impaired when the contract

was written that his expectancy was less than the average. *Rishel v. Pacific Mut. Life Ins. Co.*, 78 F.2d 881 (10th Cir. 1935).

**Issuance of policies.** A cause of action may be maintained against an insurance company for negligent delay in the issuance of a policy. *DeFord v. New York Life Ins. Co.*, 75 Colo. 146, 224 P. 1049 (1924).

As well as for negligent failure to execute the policy requested by the plaintiff. *Terry v.*

*Avemco Ins. Co.*, 663 F. Supp. 39 (D. Colo. 1987).

**An insurance company can exclude certain risks or limit coverage under a policy so long as public policy is not violated.** *Chacon v. Am. Family Mut. Ins. Co.*, 762 P.2d 732 (Colo. App. 1988).

**10-3-103. Names of companies.** No domestic insurance company shall adopt the name of any existing company transacting a similar business nor any name so similar as to be calculated to mislead the public, but any domestic mutual or mutual assessment insurance company, upon complying with the terms and conditions of this title (except article 15), and article 14 of title 24, C.R.S., may be reorganized and reincorporated as a joint stock company under the same name by which it was incorporated as a mutual or assessment company, with the omission of the word "mutual", and it is unlawful for any other company to be incorporated or transact business under or by the name under which any such mutual or mutual assessment company was operating at the time of reincorporation.

**Source:** L. 13: p. 334, § 19. C.L. § 2489. CSA: C. 87, § 17. CRS 53: § 72-1-15. C.R.S. 1963: § 72-1-15. L. 92: Entire section amended, p. 1535, § 23, effective May 20. L. 2004: Entire section amended, p. 898, § 9, effective May 21. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1501, § 19, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-104. Unauthorized companies - penalties.** Except for reinsurance by an authorized insurer or insurance effected pursuant to the provisions of article 5 or article 15 of this title, it is unlawful for any person, company, or corporation in this state to procure, receive, or forward applications for insurance in, or to issue or to deliver policies for, any company not legally authorized to do business in this state, as provided in this title and article 14 of title 24, C.R.S. Any person violating the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** L. 13: p. 334, § 20. C.L. § 2490. CSA: C. 87, § 18. L. 49: p. 472, § 17. CRS 53: § 72-1-16. C.R.S. 1963: § 72-1-16. L. 92: Entire section amended, p. 1536, § 24, effective May 20. L. 2003: Entire section amended, p. 849, § 1, effective July 1. L. 2006: Entire section amended, p. 1490, § 9, effective June 1. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1502, § 20, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-105. Certificate of authority to do business - companies prohibited - definitions.** (1) Except pursuant to the provisions of article 5 of this title, no foreign or domestic insurance company shall transact any insurance business in this state, unless it first procures from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on June 30 each year and shall be renewed annually if the company has continued to comply with the laws of the state.

(2) Except as provided by subsection (3) of this section, no certificate of authority to transact any kind of insurance business in this state shall be issued or renewed to any



company which is owned, or financially controlled in whole or in part, by another state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either, unless such company was so owned, controlled, or constituted prior to January 1, 1955, and also authorized to do business in this state on or prior to January 1, 1955.

(3) (a) The ownership or financial control, in part, of any insurer by any state of the United States, or by a foreign government, or by any political subdivision, instrumentality, or agency of either shall not restrict the commissioner from issuing, renewing, or continuing in effect the license of that insurer to transact in this state the kinds of insurance business for which that insurer is otherwise qualified under the provisions of this title and under its charter, if the insurer has satisfied the commissioner that:

(I) It is not subject to any form of subsidy;

(II) It does not engage in practices that discriminate in violation of section 24-34-402, C.R.S.;

(III) The ownership or financial control will not create the presence of any sovereign immunity in the insurer;

(IV) Appropriate measures and controls exist to avoid security problems resulting from the insurer's access to confidential information and data of its insured; and

(V) The ownership or financial control will not result in substantial or undue influence being asserted over the insurer.

(b) The provisions of paragraph (a) of this subsection (3) are a clarification of the provisions of subsection (2) of this section and not a substantive change in the provisions of said subsection (2) as said subsection (2) existed prior to March 11, 1991.

(4) (a) The commissioner may order an insurer to pay restitution to a person, if, after notice to the insurer and after a hearing held in accordance with sections 24-4-104 and 24-4-105, C.R.S., the commissioner finds that the insurer has violated this title or that the insurer is financially responsible for the unfair business practices of an insurance producer pursuant to section 10-3-131.

(b) As used in this subsection (4), "insurance producer" shall have the same meaning as set forth in section 10-2-103 (6).

(c) For the purposes of this subsection (4), "restitution" means benefits or moneys owed due to the regulated entity's violation of this title, including, but not limited to, costs and expenses for lost time from work and attorney fees.

**Source:** L. 13: p. 334, § 21(1). C.L. § 2491. CSA: C. 87, § 19. L. 49: p. 472, § 18. CRS 53: § 72-1-17. C.R.S. 1963: § 72-1-17. L. 91: (2) amended and (3) added, p. 1239, § 1, effective March 11. L. 92: (1) amended, p. 1536, § 25, effective July 1. L. 2008: (4) added, p. 585, § 2, effective August 5; (4)(c) amended, p. 2174, § 6, effective August 5.

**Cross references:** For acts which constitute transacting business by an unauthorized insurer, see § 10-3-903.

## ANNOTATION

**Annotator's note.** Cases relevant to § 10-3-105 decided prior to its earliest source, L. 13, p. 334, § 21 (1), have been included in the annotations to this section.

**After a company is once established according to the provisions of this section** upon proper evidence, the validity of the company's organization cannot be questioned or its legal existence denied by any of its members. Aronoff v. Pioneer Mut. Comp. Co., 134 Colo. 395, 304 P.2d 1083 (1956).

**The corporation is responsible to the government, and until forfeiture may continue to exercise its legitimate functions.** Aronoff v. Pi-

ioneer Mut. Comp. Co., 134 Colo. 395, 304 P.2d 1083 (1956).

**Even when commissioner unlawfully issued certificate.** Policyholders may not attack an assessment as being invalid for the reason that the insurance commissioner unlawfully issued certificates of authority permitting the company to do business when its financial condition was impaired and it had failed to maintain the required reserve and surplus. Aronoff v. Pioneer Mut. Comp. Co., 134 Colo. 395, 304 P.2d 1083 (1956).

**Judicial proceedings must be resorted to, and judgment of ouster made to effect a disso-**



lution. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

**Contracts of insurance made out of the state by correspondence** upon property in the state are valid and enforceable. *French v. People*, 6 Colo. App. 311, 40 P. 463 (1895).

**Compliance with section presumed on appeal.** An action by an insurance company where there was introduced in evidence a document to

show its authority to do business in this state, and the abstract of record prepared on appeal fails to contain the document, it will be presumed that the document introduced in evidence was a certificate of the superintendent of insurance that the requirements of the law of the state had been complied with. *Thompson v. Commercial Union Assurance Co.*, 20 Colo. App. 331, 78 P. 1073 (1904).

**10-3-106. Deemed incorporated under corporation law.** All insurance companies having capital stock, incorporated under the laws of this state, are deemed to be incorporated under the general corporation laws of this state; but, excepting any provision of existing insurance laws which may purport to prescribe the law under which insurance companies may be or have been incorporated, no law or provision of law specially or expressly applicable to insurance companies or the business of insurance shall be in any way repealed, modified, or affected by this section.

**Source:** L. 33: p. 615, § 3. CSA: C. 87, § 53. CRS 53: § 72-1-51. C.R.S. 1963: § 72-1-51.

**Cross references:** For the general corporation law, see § 7-101-101 et seq.

**10-3-107. Appointment of registered agent - commissioner agent for service of process.** (1) Except pursuant to the provisions of article 5 of this title, no foreign insurance company, directly or indirectly, shall issue policies, take risks, or transact business in this state until it has first appointed, in writing, the commissioner to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in any action or proceeding against the company may be served with the same effect as if the company existed in this state. Such power of attorney shall stipulate and agree, upon the part of the company, that any lawful process against the company that is served on said attorney, or in the commissioner's absence any employee in charge of the commissioner's office, shall be of the same legal force and validity as if served on the company and that the authority shall continue in force so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by the commissioner shall be deemed sufficient evidence, and service upon such attorney shall be deemed sufficient service upon the principal. The certificate of appointment may be filed in an electronic format.

(1.5) (a) The provisions of subsection (1) of this section shall not apply to any insurance company maintaining a home office or a regional home office in this state.

(b) Each insurance company maintaining a home office or regional home office in this state shall file with the commissioner the name of a person designated to receive service of process. The commissioner shall maintain a list of persons so designated and shall make information from such list available to any person upon request. Each company must report any change in the name of the person designated to receive service of process to the commissioner within ten days after making such change. The information required to be filed with the commissioner pursuant to this subsection (1.5) may be filed in an electronic format.

(2) Whenever lawful process against any insurance company is served upon the commissioner, three copies shall be furnished, and he shall forthwith forward a copy of the process served on him by certified mail, postpaid, to the secretary of the company or, in case of companies of foreign countries, to the resident manager in this country, and he shall also forward a copy thereof to the general agent of said company in this state.

**Source:** L. 13: p. 339, § 22. C.L. § 2492. CSA: C. 87, § 20. L. 49: p. 473, § 19. CRS 53: § 72-1-33. C.R.S. 1963: § 72-1-33. L. 73: p. 847, § 1. L. 86: (2) amended, p.

554, § 2, effective July 1. **L. 89:** (2) amended, p. 436, § 4, effective July 1. **L. 91:** (2) amended, p. 1228, § 2, effective June 5; (1.5) added, p. 1243, § 4, effective July 1. **L. 2004:** (1) and (1.5)(b) amended, p. 1059, § 4, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Short-Arm Jurisdiction", see 37 U. Colo. L. Rev. 309 (1965).

**Service on commissioner authorized in suit on bond on Colorado contract.** The execution and delivery of a bond in Colorado to secure performance of a contract to be performed in Colorado authorizes the service of process, in a suit on the bond, on the commissioner. *Bankers' Sur. Co. v. Town of Holly*, 219 F. 96 (8th Cir. 1915).

**Where summons was served on the deputy commissioner** rather than commissioner of insurance, then, where the surety company received the summons and complaint, an objection to such service is very technical and does not appeal favorably to a court of justice. *Bankers' Sur. Co. v. Town of Holly*, 219 F. 96 (8th Cir. 1915).

**10-3-108. File duly certified copy of charter.** Except pursuant to the provisions of article 5 of this title, no foreign insurance company shall transact any business in this state unless it first files in the office of the commissioner a duly certified copy of its charter, articles of incorporation, or deed of settlement, together with a statement, under oath, of the president and secretary, or other chief officers of such company, showing the condition of affairs of such company on the thirty-first day of December next preceding the date of such oath. The statement shall be in the same form and shall set forth the same particulars as the annual statement required by this title (except article 15) and article 14 of title 24, C.R.S. After filing its articles of incorporation or charter with the secretary of state, no insurance company shall be required to file its annual report or any other instrument, except amendments to said articles of incorporation or charter, in the office of the secretary of state or to pay to the secretary of state an annual corporation tax. The filings required pursuant to this section may be made in an electronic format.

**Source:** **L. 13:** p. 339, § 23. **C.L.** § 2493. **CSA:** C. 87, § 21. **L. 49:** p. 473, § 20. **CRS 53:** § 72-1-34. **C.R.S. 1963:** § 72-1-34. **L. 92:** Entire section amended, p. 1536, § 26, effective May 20. **L. 2004:** Entire section amended, p. 1060, § 5, effective July 1. **L. 2012:** Entire section amended, (HB 12-1266), ch. 280, p. 1502, § 21, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

#### ANNOTATION

**Certificates, when filed, become** official statements, solemnly made for the purpose of compliance with the law, and, when filed, they become public records. *Mutual Life Ins. Co. v.*

*Lewis*, 13 Colo. App. 528, 58 P. 787 (1899) (decided prior to earliest source of this section, *L. 13*, p. 339, § 23).

**10-3-109. Reports, statements, assessments, and maintenance of records - publication - penalties for late filing, late payment, or failure to maintain.** (1) Every insurance company doing business in this state, on or before the first day of March in each year, shall submit to the commissioner a report, signed and certified by its chief officers, of its condition on the preceding thirty-first day of December, which shall include a detailed statement of assets and liabilities, the amount and character of its business transacted, and moneys received and expended during the year, and any further details of expenditures, and such other information, to be included in the report or supplementary thereto, as the commissioner deems necessary. A synopsis of such statement, together with the commissioner's certificate of authority to transact business in this state, shall be published in some



newspaper of general circulation, published at the state capital, for at least four insertions. Such publication shall be made within thirty days after such certificate of authority is issued, and a copy of the paper containing such publication shall be filed in the office of the commissioner. The commissioner shall revoke and refuse to reissue the certificate of authority of any insurance company failing or refusing to furnish the reports or other information requested by the commissioner as provided in this section. The report required pursuant to this subsection (1) may be filed in an electronic format.

(2) If any annual report, statement, or payment of special fees assessed pursuant to section 10-8-530 from any entity regulated by the division of insurance is not filed by the date specified by law or by rules of the commissioner, the commissioner may assess a penalty of up to one hundred dollars per day for each day after the date an annual statement, report, or assessment of special fees is due from any such entity.

(3) If any entity regulated by the division of insurance fails to file any other document required by law or rules and regulations to be filed with the division of insurance or fails to maintain complaint records as required by law, the commissioner may assess a penalty not to exceed five hundred dollars for an initial violation and a penalty not to exceed five thousand dollars for any subsequent failure to comply with any such filing requirement or requirement to maintain records. The commissioner, by rule and regulation, may establish a schedule for the assessment of penalties as authorized in this subsection (3) based upon the frequency and severity of noncompliance.

**Source:** L. 13: p. 340, § 24. C.L. § 2494. CSA: C. 87, § 22. CRS 53: § 72-1-35. C.R.S. 1963: § 72-1-35. L. 92: Entire section amended, p. 1536, § 27, effective May 20. L. 2001: (2) amended, p. 1051, § 35, effective July 1. L. 2004: (1) amended, p. 1060, § 6, effective July 1.

**Cross references:** For financial statements, see § 10-3-208; for nondisclosure of reports during periods of supervision or conservatorship, see § 10-3-414.

#### ANNOTATION

**For validity of indictment charging perjury in making false statements in report,** see *People v. Swanson*, 109 Colo. 371, 125 P.2d 637 (1942).

**Subsection (3) provides express authority to the commissioner of insurance to levy a fine**

on an insurer when the insurer has failed to provide a complete response to an inquiry letter from the division of insurance during the course of an investigation. *Colo. Div. of Ins. v. Auto-Owner's Ins. Co.*, 219 P.3d 371 (Colo. App. 2009).

#### 10-3-110. Remuneration of company officials. (Repealed)

**Source:** L. 13: p. 354, § 52. C.L. § 2525. CSA: C. 87, § 67. CRS 53: § 72-3-14. C.R.S. 1963: § 72-3-14. L. 71: p. 718, § 1. L. 81: Entire section repealed, p. 524, § 1, effective March 27.

**10-3-111. Violations - penalty.** Except for violations of section 10-3-104 or article 15 of this title, any officer, director, stockholder, attorney, or agent of any corporation or association who violates any of the provisions of this title and article 14 of title 24, C.R.S., who participates in or aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of said references, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than one year and by a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of said references is liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying or producing any books, papers, or other documents, before any court, upon any investigation, proceeding, or trial, for a violation of any of the provisions of said references upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of such person



may tend to incriminate or degrade him or her; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him or her upon any criminal investigation or proceeding.

**Source:** L. 13: p. 354, § 53. C.L. § 2526. CSA: C. 87, § 68. CRS 53: § 72-3-15. C.R.S. 1963: § 72-3-15. L. 83: Entire section amended, p. 448, § 1, effective March 15. L. 92: Entire section amended, p. 1537, § 28, effective May 20. L. 2003: Entire section amended, p. 849, § 2, effective July 1. L. 2005: Entire section amended, p. 761, § 12, effective June 1. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1502, § 22, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-112. Directors - terms - election - conflicts of interest - recovery of profits.**  
(1) (a) The business of insurance companies incorporated under the laws of this state shall be managed by a board of directors consisting of such number of directors, not less than three, as may be prescribed by the articles of incorporation or bylaws, and said directors shall hold office until their successors are duly elected and qualified. Such directors shall be nominated and elected in the manner prescribed by the bylaws of the company not inconsistent with the laws of this state. No director may serve who has been convicted of fraud involving any financial institution or of a felony, but the commissioner may waive this provision regarding a felony if he or she determines that the particular felony does not jeopardize the person's ability to act as a director.

(b) Each executive officer and director of a domestic company applying for a certificate of authority to do business in Colorado shall submit a set of fingerprints to the commissioner. The commissioner shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the employer.

(2) Every domestic insurance company shall report within thirty days to the commissioner any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. For purposes of this subsection (2), the term "executive officer" includes only the following: Chairman of the board of directors, president, executive vice-president, secretary, and treasurer.

(3) No director, officer, or employee having any authority in the investment or disposition of the funds of a domestic insurance company shall accept, except on behalf of the company, or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company; but a director who is not otherwise an officer or employee of the company may receive reasonable compensation for necessary services performed for sales or purchases made to or for the company in the ordinary course of its business and in the usual private professional or business capacity of such director.

(4) Any profit or gain received by or on behalf of any person in violation of subsection (3) of this section shall inure to and be recoverable by the company. Suit to recover such profit may be instituted in any court of competent jurisdiction by the company, or by any stockholder of the company in its name and in its behalf if the company fails or refuses to bring such suit within sixty days after request in writing or fails diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized.

**Source:** L. 13: p. 346, § 31. C.L. § 2502. L. 33: p. 614, § 1. CSA: C. 87, § 29. CRS 53: § 72-1-43. C.R.S. 1963: § 72-1-43. L. 67: p. 163, § 1. L. 69: p. 510, § 1. L. 2002: (1) amended, p. 970, § 1, effective June 1.

**10-3-113. Increase of capital.** (1) Any such corporation organized and duly licensed by the commissioner to conduct an insurance business may sell additional stock or increase its capital for the purpose, in the manner, and to the extent prescribed by law, but the expense incurred in connection with such sale shall not exceed twenty percent of the amount realized from the sale of its capital stock, whether in cash or notes, and said expense shall be paid from surplus funds of the corporation.

(2) The provisions of this title (except article 15) and article 14 of title 24, C.R.S., also apply in the formation and authorization of domestic insurance companies formed upon the mutual plan, and to associations formed upon the assessment plan, that are organized with a guaranty fund in lieu of capital as provided in said references.

**Source:** L. 13: p. 346, § 2. L. 15: p. 270, § 1. L. 21: p. 457, § 5. C.L. § 2503. CSA: C. 87, § 30. L. 41: p. 502, § 2. CRS 53: § 72-1-44. L. 57: p. 758, § 9. C.R.S. 1963: § 72-1-44. L. 92: (2) amended, p. 1538, § 29, effective May 20. L. 2004: (2) amended, p. 898, § 10, effective May 21. L. 2012: (2) amended, (HB 12-1266), ch. 280, p. 1503, § 23, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

#### ANNOTATION

**Law reviews.** For article, "The Colorado Securities Law", see 35 Dicta 271 (1958).

**Contract to pay 20 percent commission is valid.** A contract to pay 20 percent commission for the sale of the stock of a newly organized insurance company is not invalid as a violation of this section. Colo. Life Ins. Co. v. Madden, 73 Colo. 504, 216 P. 551 (1923).

**More than 20 percent cannot be used for organization.** It cannot appear that more than

20 percent of the total amount realized on the sale of stock was used in organization expenses. Colo. Life Ins. Co. v. Madden, 73 Colo. 504, 216 P. 551 (1923).

**Promoters of a corporation cannot deduct 20 percent of a subscription for expenses unless they actually complete enterprise and raise the necessary capital and surplus.** Alderman v. Thimgan, 76 Colo. 268, 230 P. 620 (1924).

**10-3-114. Violations - penalty.** Any officer, director, clerk, employee, or agent of any such company who receives or pays out, or orders the payment of, any money, or incurs any obligation for the payment of money, in violation of the terms of section 10-3-113 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

**Source:** L. 13: p. 346, § 33. C.L. § 2504. CSA: C. 87, § 31. CRS 53: § 72-1-45. C.R.S. 1963: § 72-1-45.

#### **10-3-115. License required of foreign companies. (Repealed)**

**Source:** L. 13: p. 347, § 34. C.L. § 2505. CSA: C. 87, § 32. CRS 53: § 72-1-46. C.R.S. 1963: § 72-1-46. L. 92: Entire section repealed, p. 1538, § 30, effective May 20.

#### **10-3-116. Sale of stock without license - penalty. (Repealed)**

**Source:** L. 13: p. 347, § 35. C.L. § 2506. CSA: C. 87, § 33. CRS 53: § 72-1-47. C.R.S. 1963: § 72-1-47. L. 92: Entire section repealed, p. 1538, § 31, effective May 20.



**10-3-117. License automatically extended - when.** When the annual statement of an insurance company licensed to do business in this state has been filed and the company's check or cash for the amount of all fees and taxes required has been tendered, the company's license to do business in this state shall be automatically extended until the commissioner refuses to relicense such company, and, when a check or cash for the fee has been tendered by the company for renewal of an agent's license, the license shall automatically be extended until the commissioner refuses to renew the license.

**Source:** L. 25: p. 316, § 6. CSA: C. 87, § 47. CRS 53: § 72-2-7. C.R.S. 1963: § 72-2-6.

**Cross references:** For statements generally, see § 10-3-109; for financial statements, see § 10-3-208.

**10-3-118. Reinsurance - conditions - credit for reinsurance.** (1) The purpose of this section is to protect the interest of insurers, claimants, ceding insurers, assuming insurers, and the public. The general assembly hereby declares it is of interest to the state to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of such state interest, the general assembly hereby supports a mandate that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies. The general assembly declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. secs. 1011 and 1012. For the purposes of this section, "insurer" and "reinsurer" include any insurance company; health maintenance organization; fraternal benefit society; or nonprofit hospital, medical-surgical, and health service corporation.

(2) Complete copies of all reinsurance treaties and contracts and other information desired shall be filed with the commissioner at the commissioner's request.

(3) No credit shall be allowed as an asset or a reduction from liability, to any domestic ceding insurer for reinsurance:

(a) If any premium tax payable by the ceding insurer on the reinsured policies is not paid as required by section 10-3-209; or

(b) Unless the contract contains an insolvency clause in accordance with section 10-3-531.

(4) (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (b), (c), (e), (f), or (g) of this subsection (4). Credit shall be allowed under paragraph (b), (c), or (e) of this subsection (4) only with respect to cessions of the kind or class of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under paragraph (e) or (f) of this subsection (4) only if the applicable requirements of paragraphs (h) and (i) of this subsection (4) have been satisfied.

(b) Credit shall be allowed when the reinsurance is ceded to a reinsurer that is licensed to transact insurance or reinsurance in this state.

(c) Credit shall be allowed when the reinsurance is ceded to a reinsurer that is accredited as a reinsurer in this state. To be accredited, a reinsurer shall:

(I) File with the commissioner evidence of its submission to this state's jurisdiction;

(II) Submit to this state's authority to examine its books and records;

(III) Be licensed to transact insurance or reinsurance or be licensed as a health maintenance organization in at least one state, or, in the case of a United States branch of

an alien reinsurer, shall be entered through and licensed to transact insurance or reinsurance in at least one state;

(IV) File annually with the commissioner a copy of its annual statement filed with the regulatory authority of its state of domicile and a copy of its most recent audited financial statement and maintain a surplus as regards policyholders or net worth in an amount not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days after its submission or maintain a surplus as regards policyholders or net worth in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

(d) Credit shall not be allowed a domestic ceding insurer if the reinsurer's accreditation has been revoked by the commissioner after notice and hearing.

(e) (I) Credit shall be allowed when the reinsurance is ceded to a reinsurer that is domiciled in, or in the case of a United States branch of an alien reinsurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section, and the assuming insurer or a United States branch of an alien reinsurer:

(A) Maintains a surplus with regard to policyholders in an amount not less than twenty million dollars; and

(B) Submits to a request of the commissioner to examine its books and records.

(II) The requirement of sub-subparagraph (A) of subparagraph (I) of this paragraph (e) shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(f) (I) Credit shall be allowed when the reinsurance is ceded to a reinsurer that maintains a trust fund in a qualified United States financial institution, as defined in section 10-1-102 (17), for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the reinsurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers. The reinsurer shall submit to examination of its books and records by the commissioner and shall bear the expense of the examination.

(II) (A) Credit for reinsurance shall not be granted under this paragraph (f) unless the form of the trust and any amendments to the trust have been approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(B) The form of the trust and any trust amendments shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the reinsurer's United States ceding insurers and their assigns and successors in interest. The trust and the reinsurer shall be subject to examination as determined by the commissioner.

(C) Such trust shall remain in effect for as long as the reinsurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing the balance of the trust, shall list the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December 31.

(III) The trust fund for a single assuming insurer shall consist of funds of an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars.

(IV) In the case of a group including incorporated and individual unincorporated underwriters, for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group, and for



reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after such date, notwithstanding the other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States. In addition, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

(g) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (b), (c), (e), or (f) of this subsection (4), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or rule of that jurisdiction.

(h) (I) If the reinsurer is not licensed or accredited to transact insurance or reinsurance in this state, or is not licensed as a health maintenance organization in this state, the credit permitted by paragraphs (e) and (f) of this subsection (4) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the reinsurer to perform its obligations under the terms of the reinsurance agreement, the reinsurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(B) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(II) This paragraph (h) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(i) If the assuming insurer does not meet the requirements of paragraph (b), (c), or (e) of this subsection (4), the credit permitted by paragraph (f) of this subsection (4) shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(I) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subparagraph (III) or (IV) of paragraph (f) of this subsection (4), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(II) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(III) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(IV) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this paragraph (i).

(5) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to a reinsurer not meeting the requirements of subsection (4) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The asset or reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such reinsurer as security for the payment of such obligations, if such security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution as defined in section 10-1-102 (17). This security may be in the form of:

- (a) Cash;
- (b) Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets;
- (c) Clean, irrevocable, unconditional letters of credit issued or confirmed in accordance with section 10-1-102 (17) (b) by a qualified United States financial institution, as defined by section 10-1-102 (17), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.
- (d) Any other form of security acceptable to the commissioner.
- (6) The commissioner may adopt rules implementing the provisions of this section.
- (7) The liquidator, conservator, receiver, or statutory successor of the ceding insurer shall give written notice to the reinsurer of the pendency of a claim against the reinsurer. Such notice shall indicate the policy or bond reinsured and whether the claim could involve a possible liability on the part of the reinsurer. Such notice shall be given within a reasonable time after such claim is filed in the conservation, liquidation, or insolvency proceeding. During the pendency of such claim, the reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense deemed available to the ceding insurer or its liquidator, conservator, receiver, or statutory successor. The expense thus incurred by the reinsurer shall be chargeable, subject to the approval of the court, against the ceding insurer as part of the expense of conservation, liquidation, or insolvency proceeding to the extent of a pro rata share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the reinsurer.

**Source:** L. 25: p. 318, § 10. CSA: C. 87, § 51. L. 51: p. 488, § 1. CRS 53: § 72-2-12. C.R.S. 1963: § 72-2-10. L. 71: p. 707, § 1. L. 79: Entire section R&RE, p. 380, § 1, effective May 25. L. 85: (7)(a)(IV) added, p. 378, § 1, effective July 1. L. 86: (6)(c) and (6)(d) added, p. 554, § 3, effective July 1. L. 89: (6)(c) and (6)(d) amended, p. 436, § 5, effective July 1. L. 91: (6) amended, p. 1229, § 3, effective June 5. L. 92: Entire section amended, p. 1539, § 32, effective May 20. L. 95: (5)(d)(I) amended, p. 489, § 2, effective May 16. L. 2003: (5)(d)(I), IP(6), and (6)(c) amended, p. 615, § 8, effective July 1. L. 2005: Entire section amended, p. 552, § 1, effective August 8.

**Cross references:** For reinsurance generally, see § 10-3-701 et seq.

#### ANNOTATION

**The negotiation and execution outside the state of a contract of reinsurance** is not doing business in the state where the insured property is situated and the original risk was assumed. *Perlman v. Great States Life Ins. Co.*, 164 Colo. 493, 436 P.2d 124 (1968).

**Commissioner has authority to disapprove any proposed terms in reinsurance contracts regarding right to offset** and modifying such contracts accordingly. *Bluewater Ins. Ltd. v. Balzano*, 823 P.2d 1365 (Colo. 1992) (decided prior to 1992 amendment).



**10-3-119. Application for receivership. (Repealed)**

**Source:** L. 25: p. 319, § 11. CSA: C. 87, § 52. CRS 53: § 72-2-13. L. 63: p. 290, § 8. C.R.S. 1963: § 72-2-11. L. 92: Entire section repealed, p. 1424, § 4, effective July 1.

**10-3-120. Investments of officers, directors, and principal stockholders.**

(1) (a) Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of equity security of a domestic stock insurance company or who is a director or an officer of such company shall file in the office of the commissioner within ten days after the person becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all classes of equity securities of such company of which the person is the beneficial owner and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating ownership at the close of the calendar month and such changes in ownership as have occurred during such calendar month.

(b) (Deleted by amendment, L. 96, p. 111, § 1, effective March 25, 1996.)

(2) For the purpose of preventing the unfair use of information which is obtained by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such equity security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the equity security purchased or of not repurchasing the equity security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company fails or refuses to bring such suit within sixty days after request or fails diligently to prosecute the same thereafter, but no such suit shall be brought more than two years after the date such profit was realized. This subsection (2) shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the equity security involved, or any transaction which the commissioner may by rules and regulations exempt as not comprehended within the purpose of this subsection (2).

(3) It is unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the equity security or his principal either does not own the equity security sold, or, if owning the equity security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person is deemed to have violated this subsection (3) if he proves that, notwithstanding the exercise of good faith, he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(4) The provisions of subsection (2) of this section shall not apply to any purchase and sale or sale and purchase, and the provisions of subsection (3) of this section shall not apply to any sale of an equity security not then or theretofore held by him in an investment account by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, otherwise than on an exchange, as presently defined in the federal "Securities Exchange Act of 1934", as amended, for such security.

(5) The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this section.

(6) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other

security which the commissioner deems to be of similar nature and considers necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(7) The provisions of this section shall not apply to equity securities of a domestic stock insurance company if:

(a) Such equity securities are registered, or are required to be registered, pursuant to section 12 of the federal "Securities Exchange Act of 1934", as amended; or

(b) Such domestic stock insurance company does not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of this section, except for the provisions of this paragraph (b).

**Source:** L. 65: p. 760, § 1. C.R.S. 1963: § 72-2-17. L. 95: (1) repealed, p. 196, § 7, effective April 13; (1) RC&RE, p. 718, § 1, effective May 23. L. 96: (1) amended, p. 111, § 1, effective March 25. L. 2008: (4) and (7)(a) amended, p. 1880, § 10, effective August 5.

**Cross references:** For the "Securities Exchange Act of 1934", see 15 U.S.C. § 78a et seq.

**10-3-121. Regulation of proxies, consents, or authorizations.** (1) The purpose of this section is to regulate the solicitation of proxies, consents, or authorizations by domestic stock insurers having one hundred or more stockholders of record in accordance with the intent of congress as expressed in the "Securities Acts Amendments of 1964", by declaring unlawful certain solicitation practices and providing for the regulation thereof.

(2) No person shall, in contravention of such rules and regulations as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of investors, solicit, or permit the use of his name to solicit, any proxy or consent or authorization in respect of any security of a domestic stock insurer having one hundred or more stockholders of record.

(3) Unless proxies, consents, or authorizations in respect of a security of a domestic stock insurer are solicited by or on behalf of the management of the insurer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (2) of this section, prior to any annual or other meeting of the holders of such security, such insurer shall, in accordance with the rules and regulations prescribed by the commissioner, file with the commissioner and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

(4) This section is applicable to all domestic stock insurers having one hundred or more stockholders of record; except that this section shall not apply to any insurer if ninety-five percent or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by less than five hundred stockholders. A domestic stock insurer that files with the securities and exchange commission forms of proxies, consents, and authorizations complying with the requirements of the federal "Securities Exchange Act of 1934", as amended, is exempt from the provisions of this section.

(5) The term "person" as used in this section includes a natural person, corporation, partnership, and association.

(6) Repealed.

**Source:** L. 65: p. 763, § 1. C.R.S. 1963: § 72-2-18. L. 95: Entire section repealed, p. 196, § 8, effective April 13; entire section RC&RE, p. 718, § 2, effective May 23. L. 96: (6) repealed, p. 95, § 2, effective March 25. L. 2008: (4) amended, p. 1880, § 11, effective August 5.

**Cross references:** For the "Securities Acts Amendments of 1964" and the "Securities Exchange Act of 1934", see 15 U.S.C. § 78a et seq.



**10-3-122. Duties of foreign companies.** Any foreign life or accident insurance company doing business in the state of Colorado, if the insurance contract is made in this state, shall pay its obligations when same are due and payable through its agent in the county where the contract was made, or at the office of its general agent within this state, after approval by the proper officers at the home office of the company, upon presentation of the insurance contract and proofs required thereunder by the insured, assigns, or beneficiaries. This insurance contract is deemed to be made and payable in the state of Colorado, if made through an authorized agent of such insurance company within this state, irrespective of where the insurance contract may be written.

**Source:** L. 13: p. 357, § 58. C.L. § 2531. CSA: C. 87, § 75. CRS 53: § 72-3-22. C.R.S. 1963: § 72-3-22.

**Cross references:** For life insurance generally, see § 10-7-101 et seq.

**10-3-123. Assessment accident associations.** (1) Every contract whereby a benefit is to accrue to a party named therein, upon the accidental death or physical disability from accident or sickness of a person, which benefit is in any degree conditioned upon the collection of an assessment upon persons holding similar contracts, is deemed a contract of accident or casualty insurance upon the assessment plan, and the business involving the issuance of such contract shall be carried on in this state only by duly authorized corporations, which are subject to the provisions and requirements of this section and the general laws governing insurance companies in this state, except as otherwise provided in this section; but nothing in this section shall be construed as applicable to organizations which conduct their business as fraternal societies, on the lodge system, or to organizations which do not employ paid agents in soliciting business or limit their certificate holders to a particular order or fraternity.

(2) Twenty-five or more persons who are citizens of this state may form a corporation to carry on the business of casualty insurance on the assessment plan, but no such corporation shall begin to do business until a guaranty fund of at least ten thousand dollars is provided and deposited, in cash or in such securities as are permitted by law in the case of stock companies, with the commissioner under the conditions named in this title (except article 15) and article 14 of title 24, C.R.S. When this is done and at least two hundred persons have subscribed in writing to be insured, and when each has paid in at least one monthly assessment or premium, the commissioner, if the laws have been complied with, shall issue a certificate of authority for such corporation, which authorizes it to commence business. The word "association" shall be used in the title or name of all corporations organized under this section instead of the word "company".

(3) Every policy or indemnity certificate issued by any casualty corporation doing business in this state shall show, in plain and legible print at the top and on the face of the same, these words: "Incorporated on the assessment plan".

(4) There shall also be printed plainly and legibly in every such policy or certificate issued the minimum and maximum limits of the contingent mutual liability of the person to whom the policy is issued, which limits and the amount of liability, in the case of corporations incorporated under the Colorado laws, shall be fixed by the bylaws, and the rule shall be uniform. Such policies or certificates shall also specify the minimum sum of money to be paid upon each contingency insured against and the number of days after satisfactory proof of the happening of such contingency at which such payment shall be made. Upon the occurrence of such contingency, unless the contract has been voided by fraud or by breach of its conditions, the association is obligated to the beneficiary for such payment at the time and to the amount specified in the policy or certificate, and this indebtedness shall be a lien upon all the property, effects, and bills receivable of the association in this state, with priority over all indebtedness thereafter incurred, but the statement of said minimum sum shall not invalidate the rights of the party insured from receiving any further amount above such minimum sum that is based upon membership and to which he is entitled by the provisions of his policy.

(5) Any corporation organized under the authority of any other state or government to issue policies or certificates of casualty insurance on the assessment plan, as a condition precedent to transacting business in this state, shall pay such fees and comply with the same requirements as exacted of stock casualty insurance companies of other states or countries, as provided by this title (except article 15) and article 14 of title 24, C.R.S., and thereafter be subject to the same general laws and penalties of this title, unless otherwise provided in this section, and it shall deposit with the commissioner or with the proper official of some other state, for the protection of all its policyholders, a sum not less than that required to be deposited by domestic casualty insurance companies organized upon the mutual assessment plan. Such corporation shall also file with the commissioner a copy of its policies or certificates and applications therefor, for approval by the commissioner, and a sworn statement from the proper officers of such corporation that they have received a copy of this section, and shall be governed thereby in issuing policies or certificates in this state. The commissioner may thereupon issue or renew the authority of such corporation to do business in this state.

(6) The money or other benefit, charity, relief, or aid to be paid or provided or rendered by any corporation authorized to do casualty insurance on the assessment plan shall not be liable to attachment or other process and shall not be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of a policy or certificate holder, or any beneficiary named therein.

(7) Any corporation doing a casualty insurance business in this state on April 15, 1913, that is incorporated to do business on the assessment plan may reincorporate under the provisions of this title (except article 15) and article 14 of title 24, C.R.S., but nothing in said references shall be construed as requiring any such corporation to reincorporate, and any such corporation may continue to exercise all rights, powers, and privileges conferred by said references, or its articles of incorporation not inconsistent with this subsection (7).

**Source:** L. 13: p. 369, § 75. C.L. § 2548. CSA: C. 87, § 92. CRS 53: § 72-3-26. C.R.S. 1963: § 72-3-25. L. 92: (2), (5), and (7) amended, p. 1544, § 33, effective May 20. L. 2004: (2), (5), and (7) amended, p. 899, § 11, effective May 21. L. 2012: (2), (5), and (7) amended, (HB 12-1266), ch. 280, p. 1503, § 24, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsections (2), (5), and (7) applies to offenses committed and applications submitted on or after July 1, 2012.

#### **10-3-124. Advertisement for insurance - requirement. (Repealed)**

**Source:** L. 73: p. 836, § 1. C.R.S. 1963: § 72-1-65. L. 77: Entire section repealed, p. 502, §§ 7, 8, effective January 1, 1978.

**10-3-125. Redomestication of foreign insurers.** (1) Any foreign insurer which is authorized or which may be authorized to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type. Said domestic insurer shall be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

(2) Any domestic insurer may, upon the approval of the commissioner, transfer its domicile to any other state in which it is authorized to transact the business of insurance and, upon such a transfer, shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve any such proposed transfer unless he determines that such transfer is not in the interest of the policyholders of this state.

(3) Any foreign insurance company admitted or which may be admitted to transact business in this state may, upon proper notice to the commissioner, change its domicile by



merger, consolidation, or otherwise to another foreign state without interruption of its license and without reapplying as a foreign insurer if:

(a) The change in domicile does not result in a reduction in the company's assets or surplus below the requirements for admission as a foreign insurer; and

(b) There is no substantial change in the lines of insurance to be written by the company; and

(c) The change in domicile has been approved by the supervising regulatory officials of both the former and new state of domicile.

(4) The certificate of authority, the agents' appointments and licenses, and the rates and other items which the commissioner allows, in his discretion, which are in existence at the time any insurer transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect. In the event of a company name change, all outstanding policies shall be endorsed with the company's new name. Every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer. Such insurers may use existing policy forms with appropriate endorsements if allowed by and under such conditions as approved by the commissioner. Every such transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

**Source:** L. 89: Entire section added, p. 443, § 1, effective April 19.

**10-3-126. Alien insurers.** (1) Any alien insurer, as defined in section 10-3-301 (1), may be admitted to do business in this state by qualifying and establishing an administrative office in this state and maintaining its corporate and insurance records in the United States for insurance of risks primarily in the United States of America, its territories, and its possessions and by complying with all of the requirements of law related to the organization and licensing of a domestic insurer of the same type.

(2) Any alien insurer, as defined in section 10-3-301 (1), which is authorized to do business (whether as an admitted company or nonadmitted company) for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by making its principal place of business at a place in this state. Said domestic insurer shall be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

**Source:** L. 89: Entire section added, p. 444, § 1, effective April 19.

**10-3-127. Domicile of nonprofit hospital, medical-surgical, and health services corporations.** (1) A corporation organized under the laws of another state for the purposes set forth in section 10-16-302 may qualify under parts 1 and 3 of article 16 of this title to do business in this state as a nonprofit hospital, medical-surgical, and health services corporation, and upon notice to the commissioner may change its domicile by merger, consolidation, or otherwise under the procedures of section 10-3-125 for insurers. Except as specified in this section, any such corporation shall comply with all provisions of parts 1 and 3 of article 16 of this title with respect to the business of the corporation in this state.

(2) The provisions of sections 10-16-304 (1) and 10-16-305 (1) shall apply to a foreign corporation to the extent such provisions do not conflict with the governing laws of the corporation's domicile.

**Source:** L. 89: Entire section added, p. 444, § 1, effective April 19. L. 92: Entire section amended, p. 1723, § 3, effective July 1.

**10-3-128. Domestic insurer - requirement to maintain offices in this state.** (1) Before granting the initial certificate of authority to an applicant to become a domestic insurer, the commissioner shall be satisfied by proper evidence that:

(a) The insurer's books and records are located or maintained in this state or are readily accessible to the examiners of this state; and

(b) The grant of a certificate of authority as a domestic insurer will provide benefit to the state of Colorado through either significant economic development or through the offering of insurance coverage desired by and beneficial to the Colorado insurance buying public.

(2) No later than January 1, 1992, any domestic insurer licensed in this state prior to July 1, 1991, shall file a plan for compliance with this section.

(3) The commissioner may modify or waive the requirements of this section for cause on a case by case basis.

(4) The commissioner may promulgate such rules and regulations as are necessary to carry out the provisions of this section.

**Source: L. 91:** Entire section added, p. 1243, § 5, effective July 1.

**10-3-129. Prohibition - display of social security number - insurance companies.**

(1) An insured may require that an insurance company or insurer doing business in Colorado not display the insured's social security number on his or her insurance identification card or proof of insurance card. If an insured makes the request, the insurance company or insurer shall reissue the insured an insurance identification card or proof of insurance card that does not display the insured's social security number.

(2) After January 1, 2006, upon issuance or renewal of an insurance policy, an insurance company or insurer doing business in Colorado shall not issue an insurance identification card or proof of insurance card that displays the insured's social security number.

**Source: L. 2004:** Entire section added, p. 1959, § 4, effective August 4.

**10-3-130. Certificate of authority application process - tracking compliance with uniform process.** The division shall make every effort to comply with the uniform process established and endorsed by the national association of insurance commissioners for applications for certificates of authority, including compliance with established deadlines for evaluating, approving, and denying applications for certificates of authority. The division shall track all aspects of the certificate of authority application process in order to monitor compliance with the uniform standards and to enable comparison with other states for purposes of determining areas for improvement.

**Source: L. 2006:** Entire section added, p. 76, § 2, effective March 27.

**10-3-131. Acts of producers - responsibility of insurer - definitions.** (1) An insurer authorized to conduct business in this state, who knew or should have known about the unfair business practices of an insurance producer, may be financially responsible for the unfair business practices of the insurance producer, who, while acting on behalf of the insurer, engaged in unfair business practices that violate this title.

(2) As used in this section, "insurance producer" shall have the meaning set forth in section 10-2-103.

**Source: L. 2008:** Entire section added, p. 586, § 3, effective August 5.



PART 2

FINANCIAL AFFAIRS

10-3-201. Cash capital - guaranty fund - deposit.

(1) (a) (I) to (IV) Repealed.

(V) No insurance company, issued a certificate of authority on or after July 1, 1995, shall be permitted to do any business in this state, unless, in addition to the other requirements of law, it possesses the minimum capital or guaranty fund and an accumulated surplus in the form of cash or marketable securities which combined are at least equal to:

TYPE OF COMPANY	TOTAL CAPITAL OR GUARANTY FUND PLUS SURPLUS
Life .....	\$1,500,000.00
Fire .....	1,500,000.00
Casualty .....	1,500,000.00
Multiple Line .....	2,000,000.00
Title Insurance .....	750,000.00

(b) To avoid situations where an insurer’s transactions would create undue financial risks to its enrollees, subscribers, or policyholders or to the people of this state, the regulations specified in this paragraph (b) are authorized. The commissioner may by regulation establish standards consistent with those of the national association of insurance commissioners which require any insurer to maintain a greater minimum surplus level than the specific dollar minimums established by paragraph (a) of this subsection (1). Such minimum surplus level shall reflect the type, volume, and nature of the insurance business being transacted and the type of entity for which the surplus levels are being established. Such regulation may additionally require the submission of an opinion by a qualified actuary which states whether or not the surplus level of the entity is sufficient for the authority requested.

(c) Companies already licensed on July 1, 1991, may continue to transact business and shall have until December 31, 1992, to increase their total capital or guaranty fund and surplus or file a plan with the commissioner. The commissioner may, upon showing of adequate justification by the company, extend the date for the company to attain the new levels specified in paragraph (a) of this subsection (1), or waive or reduce such new levels.

(d) An insurance company subject to this section shall increase its capital and surplus to those limits set forth in paragraph (a) of this subsection (1) within thirty days after any change of control of the insurance company. Any extension granted pursuant to paragraph (c) of this subsection (1) shall be automatically rescinded in the event of such a change of control. The insurance company is not required to increase its capital and surplus if the transfer of ownership occurs because of death and the ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

(2) The cash or securities representing the minimum capital or guaranty fund and surplus required by paragraph (a) of subsection (1) of this section shall be deposited, in the case of domestic companies, with the commissioner in the manner provided by law and, in the case of foreign or alien companies, with the commissioner or with the duly authorized officer of some other state of the United States; except that the guaranty fund of mutual companies shall be construed to include deposits held for the benefit of policyholders as provided in this title (except article 15) and article 14 of title 24, C.R.S.

(3) The deposit shall be held by the commissioner for the benefit of all policyholders wherever located. For a foreign or alien insurer to be allowed credit for deposits in other jurisdictions, such deposits must be held for the benefit of all policyholders wherever located and not solely or with preference for those in the depository jurisdiction.

**Source:** L. 13: p. 340, § 25. C.L. § 2495. CSA: C. 87, § 23. L. 51: p. 466, § 1. CRS 53: § 72-1-36. L. 63: p. 570, § 1. C.R.S. 1963: § 72-1-36. L. 69: p. 527, § 2. L. 79: (1)(c) and (1)(d) added, p. 359, § 4, effective July 1. L. 91: (1) and (2) R&RE, p. 1244, § 6, effective July 1. L. 92: (1)(b) amended, p. 1766, § 2, effective March 20; (2) amended, p. 1545, § 34, effective May 20. L. 2004: (2) amended, p. 899, § 12, effective May 21. L. 2012: (2) amended, (HB 12-1266), ch. 280, p. 1504, § 25, effective July 1.

**Editor's note:** (1) Subsection (1)(a)(I)(B) provided for the repeal of subsection (1)(a)(I), effective July 1, 1992. (See L. 91, p. 1244.)

(2) Subsection (1)(a)(II)(B) provided for the repeal of subsection (1)(a)(II), effective July 1, 1993. (See L. 91, p. 1244.)

(3) Subsection (1)(a)(III)(B) provided for the repeal of subsection (1)(a)(III), effective July 1, 1994. (See L. 91, p. 1244.)

(4) Subsection (1)(a)(IV)(B) provided for the repeal of subsection (1)(a)(IV), effective July 1, 1995. (See L. 91, p. 1244.)

(5) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For deposit and safekeeping of securities, see § 10-3-210.

## ANNOTATION

I. General Consideration.

II. Deposit for Benefit of Policyholders.

### I. GENERAL CONSIDERATION.

**Policyholders may not attack assessment where certificate unlawfully issued.** Policyholders may not attack an assessment as being invalid for the reason that the insurance commissioner unlawfully issued certificates of authority permitting the company to do business when its financial condition was impaired and it had failed to maintain the required reserve and surplus. *Aronoff v. Pioneer Mut. Comp. Co.*, 134 Colo. 395, 304 P.2d 1083 (1956).

### II. DEPOSIT FOR BENEFIT OF POLICYHOLDERS.

**This section provides** that no life insurance company shall be permitted to be incorporated for business until a deposit, either in cash or in approved securities, is made with the state as a guaranty fund to protect policyholders and the business of the company. *Greiger v. Salzer*, 63 Colo. 167, 165 P. 240 (1917).

**An express trust is specifically set up for the benefit of all policyholders** under this section. *Ogden First Fed. Sav. & Loan Ass'n v. Armstrong*, 111 Colo. 309, 141 P.2d 173 (1943).

**Policyholders have vested right in securities deposited.** Persons procuring insurance policies while statutes requiring the deposit of securities for their protection are in force have a vested right in and to securities theretofore deposited with the insurance commissioner under the terms of the statutes. *Cochrane v. Pacific States Life Ins. Co.*, 93 Colo. 462, 27 P.2d 196 (1933).

**It is beyond the power of the general assembly to authorize a withdrawal** of the deposits over the objection of such policyholders. *Cochrane v. Pacific States Life Ins. Co.*, 93 Colo. 462, 27 P.2d 196 (1933).

**Withdrawal not authorized until all claims are satisfied in full.** The capital of a company is impounded and cannot be returned to the company even when so authorized by subsequent legislation until all who took out policies while the law was in force have had their claims satisfied in full. *Ogden First Fed. Sav. & Loan Ass'n v. Armstrong*, 111 Colo. 309, 141 P.2d 173 (1943).

**10-3-202. Surplus ascertained - disposition of.** Surplus of domestic insurance companies shall be ascertained by offsetting as a liability against the company's admitted assets the par value of its outstanding capital stock, if any, its reserve liability, and its current obligations of every kind. The excess of said admitted assets over said liabilities shall be the company's surplus. Surplus of domestic stock insurance companies belongs to their stockholders, and such part of the surplus may be apportioned or paid to policyholders, beneficiaries, and annuity and supplementary contract holders as the companies may from time to time determine.



**Source:** L. 25: p. 312, § 1. CSA: C. 87, § 42. CRS 53: § 72-2-2. C.R.S. 1963: § 72-2-1. L. 69: p. 491, § 2. L. 2004: Entire section amended, p. 1061, § 7, effective July 1.

**10-3-203. Additional deposits - withdrawals.** Any domestic insurance company depositing its insurance reserves with the commissioner under the optional reserve deposit law, section 10-7-101, at its option and in addition to its insurance reserves deposit, may also deposit with the commissioner approved securities not less in amount than the reserve required to mature any or all of the company's other contractual obligations of every kind designated at the time the deposits are made. Such additional deposits shall be to secure the payment of such other contractual obligations so designated. In determining the amount of deposit to be maintained with the commissioner on account of insurance or other reserves, he shall make proper deductions from the mathematical reserves for all indebtedness to the company on account of each policy and each contractual obligation not exceeding the reserve thereon, and for deferred and uncollected premiums on the policies and for the reserve on such part of each policy as may be reinsured as provided by law. Any amount at any time on deposit in excess of the amount required may be withdrawn by the depositing company. Whenever any such company makes an application to withdraw any excess deposit, the commissioner may accept the estimate or calculation of the company of such reserves or, at his option, may have a calculation or estimate thereof made for said purpose or an appraisal of the depositing company's securities, or both, at the expense of the company so applying, at such reasonable expense as may be agreed to by the company.

**Source:** L. 31: p. 421, § 1. CSA: C. 87, § 55. CRS 53: § 72-3-3. C.R.S. 1963: § 72-3-3.

**10-3-204. Payment of dividends.** (1) The amount of dividend payments by any domestic insurance company is wholly within the discretion of its directors or of the duly constituted executive committee thereof. No dividend shall be paid except from the company's surplus.

(2) It is unlawful for the directors, trustees, managers, or officers of any domestic insurance company, directly or indirectly, to make or pay any dividends or pay any interest, bonus, or other allowance in lieu of dividends, other than premium refunds and deductions guaranteed, except from the company's surplus and from profits arising from the company's business. Any person who is found guilty of violating any provision of this section shall be punished by a fine of not more than one thousand dollars.

**Source:** L. 25: p. 313, § 2. L. 33: p. 615, § 2. CSA: C. 87, § 43. CRS 53: § 72-2-3. C.R.S. 1963: § 72-2-2.

#### ANNOTATION

**Law reviews.** For article, "One Year Review of Agency, Partnerships, and Corporations", see 39 Dicta 61 (1962).

**This section is criminal.** Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

**There is nothing inconsistent in § 7-5-111 and this section.** Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

**There is civil liability under § 7-5-111.** The fact that an officer and director of a corporation might be tried and punished for unlawful acts under this section does not preclude his being answerable in a civil action under § 7-5-111 for the same acts though not designated as unlawful. Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

**10-3-205. Manner of paying surplus.** Every policyholder on all participating policies issued shall be permitted at the time the first dividend is declared to select from among the options set forth in the policy the manner and method of the payment of the surplus to be annually apportioned to his policy.

**Source:** L. 13: p. 353, § 49. C.L. § 2522. CSA: C. 87, § 63. CRS 53: § 72-3-10. C.R.S. 1963: § 72-3-10.

**10-3-206. Security deposits - certificates.** (1) The commissioner shall receive and hold on deposit, in the manner provided in this law, the securities of domestic companies that are deposited by any such company under the provisions of this title (except article 15) and article 14 of title 24, C.R.S., for the purpose of securing policyholders or to comply with any similar law of another state to enable the company to transact business in such state. All securities so offered for deposit shall belong to and be the sole property of such company and shall be free and clear of any claims whatsoever, and the commissioner shall determine the same by proper inquiry.

(2) The commissioner shall furnish to such company a certificate, under his hand and official seal, certifying that he holds said securities in trust for the benefit of the policyholders of such company.

**Source:** L. 13: p. 325, § 10. L. 21: p. 454, § 2. C.L. § 2480. CSA: C. 87, § 9. CRS 53: § 72-1-9. C.R.S. 1963: § 72-1-9. L. 92: (1) amended, p. 1545, § 35, effective May 20. L. 2004: (1) amended, p. 900, § 13, effective May 21. L. 2012: (1) amended, (HB 12-1266), ch. 280, p. 1504, § 26, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For procedure for deposit and commissioner's duty to safeguard, see § 10-3-210.

#### ANNOTATION

**The securities deposited constitute an exclusive trust.** Securities deposited by insurance companies under the provisions of this section constitute an exclusive trust for the purpose of securing to policyholders policies theretofore

issued, and the section remains in force until its object and purpose has been fulfilled and discharged. *Cochrane v. Pacific States Life Ins. Co.*, 93 Colo. 462, 27 P.2d 196 (1933).

**10-3-207. Fees paid by insurance companies.** (1) Every entity regulated by the division in this state shall pay the following fees to the division:

(a) For investigating and processing an initial application for authorization or licensure as a foreign or domestic insurance company to do business in this state, a nonrefundable fee of five hundred dollars, which fee shall accompany each application for authorization or licensure;

(b) In each year subsequent to 1992, in addition to any fee collected under paragraph (a) of this subsection (1), every insurance company, interinsurance company, fraternal benefit society, health maintenance organization, and nonprofit hospital, medical-surgical, and health service corporation licensed or authorized in this state that is regulated by the division of insurance shall make an annual nonrefundable payment on or before March 1 of each year based on the schedule specified in this paragraph (b) at the time of authorization and each subsequent renewal year. For nonadmitted insurers and accredited reinsurers, the fee specified in this paragraph (b) shall be considered to include the fee pursuant to paragraph (a) of this subsection (1):

(I) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health service corporations that have prior year's direct written premiums, gross contract funds, or charges received in Colorado not exceeding one million dollars, a fee of six hundred seventy dollars;

(II) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health



service corporations that have prior year's direct written premiums, gross contract funds, or charges received in Colorado in excess of one million dollars but not exceeding ten million dollars, a fee of two thousand ten dollars. Any insurance company that did not write at least eighty thousand dollars of taxable premiums in the previous year in Colorado shall not exceed the fee as otherwise would have been payable pursuant to subparagraph (I) of this paragraph (b).

(III) For insurance companies, interinsurance companies, fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, and health service corporations that have prior year's direct written premiums, gross contract funds, or charges received in Colorado in excess of ten million dollars, a fee of three thousand three hundred forty-five dollars. Any insurance company that did not write at least one hundred twenty thousand dollars of taxable premium in Colorado shall not exceed the fee as otherwise would have been payable pursuant to subparagraph (II) of this paragraph (b).

(c) (Deleted by amendment, L. 92, p. 1545, § 36, effective July 1, 1992.)

(d) and (e) Repealed.

(f) (I) For the purpose of providing adequate funds to the division for market analysis, investigation, and enforcement of article 11 of this title and rules adopted pursuant to said article 11, in addition to any other fee collected pursuant to this subsection (1), each title insurer regulated by the division pursuant to article 11 of this title shall pay a nonrefundable annual fee on or before March 1 of each year. This fee shall be established by the commissioner in an amount sufficient to support two full-time equivalents within the division.

(II) Repealed.

(III) Notwithstanding any provision of section 10-1-103 or 10-1-108 (9) to the contrary, all fees and surcharges collected pursuant to this paragraph (f) shall be transmitted to the state treasurer, who shall deposit the same in the division of insurance cash fund created in section 10-1-103, and shall be subject to annual appropriation to the division and to the department of law for the purposes set forth in this paragraph (f).

(IV) Commencing January 1, 2009, the division shall provide annual reports to the joint budget committee, the senate business, labor, and technology committee, and the house business affairs and labor committee, or any such successor committees, and shall post on the division's web site a statistical report of the number of enforcement actions taken, market trends associated with title insurance and real estate transactions, and consumer complaints supported by the fee in subparagraph (I) of this paragraph (f).

(1.5) Every entity regulated by the division of insurance not identified in paragraph (b) of subsection (1) of this section shall pay a fee of five hundred dollars at the time of its license or authorization renewal.

(2) Fees collected by the division of insurance pursuant to this section shall be transmitted to the state treasurer and credited to the division of insurance cash fund, created in section 10-1-103 (3).

(3) (Deleted by amendment, L. 92, p. 1545, § 36, effective July 1, 1992.)

(4) Fair and reasonable fees for various administrative services of the division of insurance, including but not limited to copying, record searches, computer listings, computer disks or tapes, and requests for any such services from individuals, shall be determined by the commissioner.

(5) Notwithstanding the amount specified for any fee in this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source:** L. 13: p. 331, § 14. C.L. § 2484. CSA: C. 87, § 12. L. 53: p. 369, § 1. CRS 53: § 72-1-12. L. 59: p. 507, § 2. C.R.S. 1963: § 72-1-12. L. 65: pp. 752, 753, §§ 1, 2. L. 71: p. 693, § 1. L. 77: (1)(q) added, p. 503, § 1, effective March 7. L. 78: (1)(h), (1)(i), (2)(d), and (2)(e) amended, p. 290, § 4, effective July 1. L. 86: (1)(d), (1)(e),

(2)(d), and (2)(e) amended, p. 554, § 4, effective July 1. **L. 89:** (1)(d), (1)(e), (1)(j), (2)(d), and (2)(e) amended, p. 436, § 6, effective July 1. **L. 91:** Entire section amended, p. 1229, § 4, effective June 5. **L. 92:** Entire section amended, p. 1545, § 36, effective July 1. **L. 95:** IP(1)(b) amended, p. 490, § 3, effective May 16. **L. 96:** (1)(d) added, p. 684, § 1, effective August 1. **L. 97:** (1)(b) amended, p. 1413, § 5, effective June 3; (1)(e) added, p. 1043, § 5, effective August 6. **L. 98:** (5) added, p. 1325, § 26, effective June 1. **L. 2006:** (1)(e) amended, p. 1209, § 1, effective May 26; (1)(d) repealed, p. 1490, § 10, effective June 1. **L. 2007:** (1)(f) added, p. 1749, § 1, effective June 1. **L. 2008:** IP(1) amended, p. 1880, § 12, effective August 5. **L. 2010:** (1)(e) repealed, (HB 10-1385), ch. 204, p. 884, § 9, effective May 5.

**Editor's note:** (1) Subsection (1)(f)(II)(B) provided for the repeal of subsection (1)(f)(II), effective July 1, 2008. (See L. 2007, p. 1749.)

(2) Subsection (1)(e) was relocated to § 10-3-207.5 in 2010.

**Cross references:** For disposition of fees, see § 10-1-108.

### **10-3-207.5. Funding for insurance fraud investigations and prosecutions - creation of fund. (Repealed)**

**Source:** **L. 2010:** Entire section added with relocations, (HB 10-1385), ch. 204, p. 882, § 1, effective May 5. **L. 2012:** Entire section repealed, (SB 12-110), ch. 158, p. 560, § 2, effective July 1.

**Editor's note:** This section was similar to former § 10-3-207 (1)(e) as it existed prior to 2010.

**10-3-208. Financial statements.** (1) All insurance companies doing business in this state, unless otherwise provided in this title (except article 15) and article 14 of title 24, C.R.S., shall make and file with the commissioner annually, on or before the first day of March in each year, a statement under oath, upon a form to be prescribed by the commissioner, stating the amount of all premiums collected or contracted for in this state or from residents thereof, in cash or notes, by the company making such statement during the year ending the last day of December next preceding; the amounts actually paid policyholders on losses and the amounts paid policyholders as returned premiums by property and casualty insurance companies; the amount of insurance reinsured in other companies authorized to do business in this state and the amount of premiums paid therefor; the amount of insurance reinsured in companies, naming them, not authorized to do business in this state and the amount of premiums paid therefor; and the amount of reinsurance accepted from admitted companies and the premiums received from such reinsurance on residents of this state or risks located in this state, with the name of the companies so reinsured. The annual statement made to the commissioner pursuant to this section or other provisions of said references shall at least include the substance of that which is required by what is known as the convention blank form adopted from year to year by the national association of insurance commissioners, including any instructions, procedures, and guidelines not in conflict with any provision of this title for completing the convention blank form.

(2) The commissioner may require any insurance company authorized to do business in this state to submit interim financial statements and reports on a monthly or quarterly basis in such form as he prescribes, as deemed necessary in the public interest.

(3) Each domestic, foreign, and alien insurer that is authorized to transact the business of insurance in this state shall on or before March 1 of each year file with the national association of insurance commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall include the signed jurat page and the actuarial certification, if applicable. Any amendments and addendums to the annual statement filing subsequently made with the commissioner shall also be filed with the national association of insurance commissioners.



(4) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (3) of this section shall be deemed in compliance with the provisions of said subsection (3).

(5) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, employees of the national association of insurance commissioners, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the required filings.

(6) Examination synopses concerning insurance companies that are submitted to the division by the national association of insurance commissioners' insurance regulatory information system are confidential and shall not be disclosed by the division.

(7) (a) In preparing the statements required by subsection (1) of this section, all insurance companies shall follow the instructions, procedures, and guidelines of the national association of insurance commissioners. If the initial application of any such instruction, procedure, or guideline would cause a reduction in the total capital and surplus of a domestic insurer of ten percent or more or would cause the capital and surplus of a domestic insurer to fall to or below the company action level as defined by the commissioner by rule, such insurer may, within thirty days after the effective date of such instruction, procedure, or guideline, file with the commissioner a request to phase in the effect of the instruction, procedure, or guideline over a period not to exceed three years or a time period approved by the commissioner.

(b) Any request made pursuant to paragraph (a) of this subsection (7) shall include a complete analysis, in a form prescribed by the commissioner, of the impact upon the insurer making the request that is expected to result from application of the subject instruction, procedure, or guideline and, if a phase-in is requested, a description of the insurer's plan for the phase-in period. The commissioner shall not deny a request for a phase-in except upon notice and the opportunity for a hearing as provided in section 24-4-105, C.R.S.

(c) Any request for a hearing made pursuant to paragraph (b) of this subsection (7) shall include a description of the basis on which relief is sought. Upon receiving such a request, the commissioner shall, with regard to the insurer making the request, postpone the effective date of the subject instruction, procedure, or guideline pending the conclusion of the hearing and the taking of final agency action thereon. The hearing shall commence within sixty days after the commissioner receives the request and shall be conducted in accordance with section 24-4-105, C.R.S.

(8) Repealed.

**Source:** L. 13: p. 331, § 15. C.L. § 2485. L. 23: p. 388, § 2. CSA: C. 87, § 13. L. 53: p. 363, § 1. CRS 53: § 72-1-13. C.R.S. 1963: § 72-1-13. L. 69: p. 503, § 1. L. 91: (1) and (2) amended, p. 1232, § 5, effective June 5; (3) to (6) added, p. 1246, § 7, effective July 1. L. 92: (1) amended, p. 1547, § 37, effective May 20. L. 97: (7) added, p. 91, § 1, effective March 24. L. 2004: (1) amended, p. 900, § 14, effective May 21. L. 2006: (8) added, p. 1429, § 1, effective August 7. L. 2011: (8) repealed, (HB 11-1033), ch. 93, p. 275, § 1, effective April 8. L. 2012: (1) amended, (HB 12-1266), ch. 280, p. 1504, § 27, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For reports generally, see § 10-3-109.

ANNOTATION

**For validity of indictment charging perjury in making false statements in report, see** People v. Swanson, 109 Colo. 371, 125 P.2d 637 (1942).

**10-3-209. Tax on premiums collected - exemptions - penalties.** (1) (a) All insurance companies writing business in this state, including, without limitation, those defined in section 10-1-102 (6), shall pay to the division of insurance a tax on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state during the previous calendar year, after deducting from such gross amount the amount received as reinsurance premiums on business in this state, and the amount refunded under credit life and credit accident and health insurance policies on account of termination of insurance prior to the maturity date of the indebtedness, and, in the case of companies other than life, the amounts paid to policyholders as return premiums, which shall include dividends or unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) (I) The rate of tax shall be as follows:

(A) For companies not exempted or charged a different rate of tax by another provision of this section, the rate of tax on the gross amount shall be:

<b>Premium collected or contracted for during:</b>	<b>Rate of tax:</b>
1996	2.20%
1997	2.15%
1998	2.10%
1999	2.05%
2000 and thereafter	2.00%

(B) For companies maintaining a home office or a regional home office in this state, the rate of tax on the gross amount shall be one percent.

(II) (A) For purposes of this paragraph (b), any office in this state shall be deemed a company's home or regional home office if such office performs substantially the following functions for the company in each state in which the company is licensed or in three or more of such states: Actuarial, medical, legal, approval or rejection of applications, issuance of policies, information and service, advertising and publications, public relations, hiring, testing, and training of sales and service forces.

(B) Any company desiring to qualify an office in this state as a home or regional home office shall make application for qualification to the commissioner on forms prescribed by the commissioner and shall submit proof that it is operating a home or a regional home office in this state. Applications for companies that were not approved in the immediate preceding year shall be received by the commissioner by December 31 of the year immediately preceding the year for which the application for qualification is being made. Applications for companies that were approved in the immediate preceding year shall be received by the commissioner by March 1 of the year for which qualification is being made. Applications for companies that were approved in the immediate preceding year received through March 31 shall pay a late charge of one hundred dollars per day for each day after March 1 that any such application is received by the commissioner. Applications received after March 31 shall be denied. The provisions of subsection (2) of this section shall not apply to companies maintaining a home office or regional home office in this state.

(III) The commissioner may consider for approval applications of companies that maintain significant direct insurance operations in Colorado and perform operational functions, for a line or lines of business written, substantially equivalent to those enumerated in subparagraph (II) of this paragraph (b).

(c) The taxes prescribed in paragraph (b) of this subsection (1) shall constitute all taxes collectible under the laws of this state against any such insurance companies, and no other occupation tax or other taxes shall be levied or collected from any insurance company by



any county, city, or town within this state; but this title (except article 15) and article 14 of title 24, C.R.S., shall not be construed to prohibit the levy and collection of state, county, school, and municipal taxes upon the real and personal property of such companies, nor shall it include or prohibit the levy and collection of a tax to be paid on net workers' compensation premiums, as provided under the "Colorado Medical Disaster Insurance Fund Act", part 3 of article 46 of title 8, C.R.S.

(d) (I) All fraternal and benevolent associations organized under the laws of this state and doing business in this state shall be exempt from the provisions of this section.

(II) Mutual protective associations writing crop hail insurance only and operating on an advance premium basis shall be exempt from the taxes provided by this section on that portion of the premium designated to the loss fund.

(III) There shall be no tax under this section in the case of any policy issued prior to 1959 by a domestic insurance company organized under the laws of this state, maintaining its principal place of business in this state, and having thirty percent or more of its assets invested in bonds or warrants of this state or of any county, city, town, or district of this state, and other property within this state in which such company is permitted by law to invest its funds, and the premium of which policy was fixed and is contractually binding upon the company.

(IV) Except to the extent provided in subsection (2) of this section, the tax imposed by this section shall not apply to premiums collected or contracted for after December 31, 1968, on policies or contracts issued in connection with a pension, profit sharing, or annuity plan established by an employer for employees if contributions by such employer thereunder are deductible by such employer in determining such employer's net income as defined in section 39-22-304, C.R.S., and shall not apply to premiums collected or contracted for after December 31, 1968, on policies or contracts purchased for an employee by an employer if such employer is exempt under section 39-22-112, C.R.S., from the tax imposed by article 22 of title 39, C.R.S., or is a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state. Except to the extent provided in subsection (2) of this section, the tax imposed by this section shall not apply to annuity considerations collected or contracted for after December 31, 1976.

(V) Repealed.

(e) The taxes provided for in this section shall be due and payable on the first day of March in each year. Any company failing or refusing to render such statement and information, or to pay taxes as specified in this section, for more than thirty days after the time specified, shall be liable to a penalty of up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. If the tax paid is less than the full amount prescribed by this section, interest at the rate of one percent per month or fraction thereof on the unpaid amount shall be charged from the date on which payment was due to the date on which full payment is made, and a penalty of up to twenty-five percent of the unpaid amount may be assessed by the commissioner. The commissioner may suspend the certificate of authority of a delinquent company until such taxes and penalty, should any penalty be imposed, are fully paid.

(f) In computing assets for the purpose of this section, the investments of any such company in the bonds, notes, or other obligations of the United States of America, or any instrumentality of the United States, the obligations of which are guaranteed by the United States, and deferred or uncollected insurance premiums and annuity considerations shall first be deducted. Any company claiming entitlement to any reduced rate provided in this section shall present such evidence in justification of its claim as may be required by the commissioner.

(g) For the purpose of obtaining the exemption provided in paragraph (d) (III) of this subsection (1), the term "other property within this state" means: Real estate and tangible personal property within this state; first mortgages upon real estate within this state; stocks or bonds of corporations organized under the laws of this state; deposits with banks, trust companies, savings and loan associations, building and loan associations, or financial institutions domiciled within this state; stocks or bonds of foreign or alien corporations which on the date of purchase of such stocks or bonds have fifty percent or more of their assets invested in this state; and accounts of agents who are residents of this state.

(2) When, by the laws of any other state, any taxes and fees in the aggregate, fines, penalties, deposits of money or securities or other obligations, prohibitions, or requirements are imposed upon insurers organized under any law of this state and transacting business in such other state, or upon the agents of such insurer, greater in aggregate amount than those imposed upon similar insurers by the laws of this state, or when the laws of any other state require insurers of this state to deposit money or security for the benefit or protection of citizens of such other state, or when the laws or officers of any other state prohibit insurers of this state from transacting business therein without a special examination of the insurers or a computation of their liabilities by the officers of that state, the same taxes and fees in the aggregate, fines, penalties, deposits, examinations, obligations, and requirements may be imposed by the commissioner upon all insurers doing business in this state that are incorporated or organized under the laws of such other state and upon their agents. For the purpose of this section, an alien insurer may be deemed to be domiciled in a state designated by it wherein it has established its principal office or agency in the United States or maintains the largest amount of its assets. If no such office or agency is established, its domicile is the country under laws of which it is formed.

(3) (a) Anything in subsection (1) of this section to the contrary notwithstanding, any insurance company doing business in this state which was liable for payment of more than five thousand dollars in taxes, as provided in this section, during the preceding calendar year shall, on and after January 1, 1971, pay quarterly estimates of such taxes as provided in paragraphs (b) to (d) of this subsection (3).

(b) Such estimated taxes shall become due and payable on the last day of the month following the close of any calendar quarter of the year, except for the fourth quarter which shall be due March 1 and shall include adjustments for the preceding calendar year. Any company failing or refusing to pay such estimated taxes for more than thirty days after the time specified shall be liable to a penalty of up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. Failure of a company to make quarterly payments, if required, each payment to be of at least one-fourth of either the total tax paid during the preceding calendar year or eighty percent of the actual quarterly tax for the current calendar year, whichever is greater, shall be considered and treated the same as a failure or refusal to pay the estimated taxes and shall subject the company to the penalties provided in this paragraph (b). The amount of estimated taxes and the penalties collected shall be paid to the division of insurance; and the commissioner may suspend the certificate of authority of such delinquent company until such estimated taxes and penalty, should any penalty be imposed, are fully paid.

(c) Estimated taxes paid pursuant to this subsection (3) shall be based on the estimated amount of taxable premiums during the preceding calendar quarter. Except for the first calendar quarter of any year, calendar quarter estimates of taxes may include adjustments for any previous calendar quarter estimates of taxes, and estimated taxes shall be paid on the basis of such adjusted estimates.

(d) Adjustments in payments of estimated taxes for any calendar year shall be made at the time of the filing of the annual statement required under section 10-3-208 and the payment of taxes required by this section. If a company claims a refund, it shall file for such refund at the time of filing such annual statement, and, if the commissioner claims a deficiency, he shall notify the deficient company thereof.

(4) All taxes, penalties, and fines collected by the division of insurance under the provisions of this section shall be transmitted to the department of the treasury and credited to the general fund; except that such amounts appropriated by the general assembly to the division of insurance cash fund, created in section 10-1-103 (3), not to exceed a maximum of five percent of all taxes collected under this section, shall be transmitted to the state treasurer and deposited in the division of insurance cash fund.

(5) For the purpose of auditing a company's tax statement, the commissioner or the commissioner's designee has the power to examine any books, papers, records, agreements, or memoranda bearing upon the matters required to be included in the tax statement. Such books, papers, records, agreements, or memoranda shall be made available upon request to the commissioner's office.



**Source:** L. 13: p. 332, § 16. C.L. § 2486. L. 33: p. 636, § 1. CSA: C. 87, § 14. L. 41: p. 515, § 1. L. 53: p. 378, § 1. CRS 53: § 72-1-14. L. 55: p. 443, § 1. L. 59: p. 505, § 1. L. 60: p. 149, § 1. L. 61: p. 438, § 1. L. 63: p. 568, §§ 1, 2. C.R.S. 1963: § 72-1-14. L. 65: p. 755, § 1. L. 69: pp. 504-506, §§ 1-4, 1. L. 70: p. 243, § 1. L. 71: p. 694, § 1. L. 73: pp. 833, 834, §§ 1, 2. L. 75: (1)(c) amended, p. 310, § 55, effective September 1. L. 77: (1)(d)(IV) amended, p. 504, § 1, effective June 21. L. 81: (1)(d)(IV) and (3)(b) amended, p. 525, § 1, effective May 13. L. 86: (1)(d)(V) added, p. 549, § 2, effective July 1. L. 87: (1)(d)(IV) amended, p. 1451, § 27, effective June 22. L. 90: (1)(c) amended, p. 558, § 14, effective July 1. L. 92: (1)(b)(II), (1)(c), and (4) amended, p. 1548, § 38, effective May 20. L. 95: (1)(b)(I) amended, p. 490, § 4, effective May 16. L. 96: (1)(a) and (1)(b) amended, p. 551, § 1, effective April 24. L. 97: (5) added, p. 531, § 4, effective April 24. L. 2000: (1)(a) amended, p. 1616, § 2, effective August 2. L. 2003: (1)(a) amended, p. 616, § 9, effective July 1. L. 2004: (1)(c) amended, p. 900, § 15, effective May 21. L. 2012: (1)(c) amended, (HB 12-1266), ch. 280, p. 1505, § 28, effective July 1.

**Editor's note:** (1) Subsection (1)(d)(V)(B) provided for the repeal of subsection (1)(d)(V), effective July 1, 1989. (See L. 86, p. 549.)

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (1)(c) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For required equality as to liabilities under subsection (1)(b) imposed by statute on domestic and foreign corporations, see article 115 of title 7; for legal effect, when discrimination exists, see *American Smelting & Refining v. Colorado*, 204 U.S. 103, 27 S. Ct. 198, 51 L. Ed. 393; for annual financial statements, see § 10-3-208.

## ANNOTATION

**The primary object and purpose of this section is to regulate insurance companies and the insurance business in the state.** It is a regulation or supervision tax, and the method of arriving at the amount, or because of its operation the act produces an excess which is required to be turned in to the general fund, does not affect its validity or render it an act for revenue. *French v. People*, 6 Colo. App. 311, 40 P. 463 (1895); *Colo. Nat'l Life Assurance Co. v. Clayton*, 54 Colo. 256, 130 P. 330 (1913).

**The intent is to create a fund for this purpose and for the maintenance of the insurance department.** *Colo. Nat'l Life Assurance Co. v. Clayton*, 54 Colo. 256, 130 P. 330 (1913).

**Company is liable for tax on premium fixed in policy.** It appears quite clearly that the plain intent of this section is that the company should be liable to pay the tax on the premium fixed in the policy, for that is the premium contracted for in the policy for each and every year until it matures. Were it not so intended certainly an exemption from liability on account of dividends would have been provided for in the statute. *Cochrane v. Nat'l Life Ins. Co.*, 77 Colo. 243, 235 P. 569 (1925); *Prudential Ins. Co. v. Kavanaugh*, 125 Colo. 93, 240 P.2d 508 (1952).

**Dividends should be considered as premiums collected or contracted for during the year, and the company is liable for the tax thereon.** *Cochrane v. Nat'l Life Ins. Co.*, 77 Colo. 243, 235 P. 569 (1925).

**But not to any subsequent divisible surplus.** The tax provided for by this section should

be applied solely on the premium contracted for in the policy, and not to any subsequent divisible surplus made applicable to the policyholder in the form of a dividend when such dividend was used to purchase paid-up additional insurance. *Prudential Ins. Co. v. Kavanaugh*, 125 Colo. 93, 240 P.2d 508 (1952).

**The state is not bound by an erroneous interpretation of a taxing statute** such as this section by one of its officers or agents. *Beery v. Am. Liberty Ins. Co.*, 150 Colo. 499, 375 P.2d 93 (1962).

**The obvious reason for subparagraph (III) of subsection (1)(d) is to encourage insurance companies to invest their assets in Colorado.** *Beery v. Am. Liberty Ins. Co.*, 150 Colo. 499, 375 P.2d 93 (1962).

**The only bonds to be included under this paragraph are bonds of the state of Colorado or any of its counties, cities, towns, or districts.** *Beery v. Am. Liberty Ins. Co.*, 150 Colo. 499, 375 P.2d 93 (1962).

**Not bonds of the United States or of other states.** All bonds except so called "Colorado" bonds in effect having been specifically excluded by this section, bonds of the United States, or of any of the other 49 states for that matter, are not "other property within this state". *Beery v. Am. Liberty Ins. Co.*, 150 Colo. 499, 375 P.2d 93 (1962).

**Subsection (1)(c) held unconstitutional as applied to Denver,** therefore must be viewed as to be limited to counties and statutory cities and

towns. *State Farm Mut. Auto. Ins. Co. v. Temple*, 176 Colo. 537, 491 P.2d 1371 (1971).

**Denver has enacted a sales and use tax.** The exemption granted in subsection (1)(c) has been superseded within Denver by the enactment of local sales and use taxes. *Security Life & Accident Co. v. Temple*, 177 Colo. 14, 492 P.2d 63 (1972).

**Insurance companies do not fall within the classifications of the entities exempted under the sales and use tax.** *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Taxation is the rule and exemption therefrom the exception.** *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**The burden is on the taxpayer who claims an exemption to clearly establish the right to such exemption.** *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Premiums under medical disaster insurance fund act subject to taxation.** The payment of the tax on premiums collected under this section is not to be interpreted as exempting the tax on premiums collected under the medical disaster insurance fund act by those insurance companies which write workmen's compensation insurance. *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**This does not indicate exemption from sales and use tax.** This section, by expressly subjecting insurance companies to the special

premium tax under the medical disaster insurance fund act, does not show an intent on the part of the general assembly to exempt insurance companies from the sales and use tax. *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Subparagraph (I) of subsection (1)(d) exempts fraternal organization from taxation.** The general assembly imposes a tax upon gross premium income of insurance companies. Fraternal and benevolent corporations defined as those which have a lodge system with a ritualistic form of work and representative form of government are exempted. It has clearly defined what is meant by "lodge system" and "representative government". Since the reorganization, *Homesteaders* has not had a lodge system; it has not had a representative form of government; nor has it performed any ritualistic work. These are requirements essential to a status that would exempt it from the tax under discussion. *Beery v. Homesteaders Life Co.*, 146 Colo. 218, 361 P.2d 127 (1961).

**Once it becomes mutual life insurance company, it loses exemption.** Where a fraternal benefit society has reorganized and becomes a mutual life insurance company, has abandoned its lodge system and ritualistic work, and discontinued its representative form of government, it is obligated to pay taxes on the gross premiums received by it following reorganization on the old certificates issued as a fraternal benefit society. *Beery v. Homesteaders Life Co.*, 146 Colo. 218, 361 P.2d 127 (1961).

**10-3-210. Deposit and safekeeping of securities.** (1) (a) The commissioner shall give receipts for all securities deposited with the commissioner, as required or permitted by law, to the company depositing them.

(b) If the company depositing securities in accordance with paragraph (a) of this subsection (1) is adjudged insolvent, such deposit shall be released only upon the entry of an order of a court acting in accordance with the provisions of part 5 of this article. If a company that has not been adjudged insolvent elects to dissolve, the commissioner may release securities under joint control upon a showing by the insurance company satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made, and upon return of the company's certificate of authority to the commissioner.

(c) (Deleted by amendment, L. 2004, p. 1061, § 8, effective July 1, 2004.)

(d) If the company depositing securities in accordance with paragraph (a) of this subsection (1) remains solvent, the commissioner shall permit such company, or its assigns, to:

(I) Collect and receive the interest and dividends on deposited securities; and

(II) Withdraw any deposited securities if the company simultaneously deposits other securities to replace those withdrawn.

(e) The provisions of this subsection (1) shall not apply to securities subject to part 12 of this article.

(2) (a) (I) Notwithstanding any other provision of law, the securities qualified for deposit under this section may be deposited as provided in part 12 of this article with a clearing corporation or held in the federal reserve book-entry system.

(II) Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this section shall



be under the control of the commissioner and shall not be withdrawn by the company without the approval of the commissioner.

(b) The commissioner may prescribe or approve reasonable arrangements and safeguards under which a solvent company may sell a particular deposited security if the company:

(I) Immediately reinvests the proceeds of the sale in other securities eligible for deposit under this article; and

(II) Deposits other securities to replace those securities that were sold.

(c) Any owner, nominee owner, depository, or custodian of securities held in accordance with paragraph (a) of this subsection (2) shall not sell, claim against, or otherwise dispose of said securities without written permission of the commissioner.

(d) Any company holding securities in accordance with paragraph (a) of this subsection (2) shall provide to the commissioner evidence issued by its custodian or member bank through which such company has deposited such securities in a clearing corporation or through which such securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and that the records of the custodian, other participant, or member bank reflect that such securities are held subject to the order of the commissioner.

(e) If the company depositing securities in accordance with paragraph (a) of this subsection (2) remains solvent, the commissioner shall permit such company, or its assigns, to:

(I) Collect and receive the interest and dividends on those deposited securities; and

(II) Withdraw any deposited securities if the company simultaneously deposits other securities to replace those withdrawn.

(f) If the company depositing securities in accordance with paragraph (a) of this subsection (2) is adjudged insolvent, such deposit shall be released only upon the entry of an order of a court acting in accordance with the provisions of part 5 of this article. If a company that has not been adjudged insolvent elects to dissolve, the commissioner may release securities under joint control upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made, and upon return of the company's certificate of authority to the commissioner.

(g) (I) The commissioner may designate any solvent national bank, state bank, or trust company located in the city and county of Denver as the commissioner's depository for receiving and holding as custodian any deposit of securities in accordance with paragraph (a) of this subsection (2).

(II) Any deposit received and held pursuant to this subsection (2) shall be received and held at the expense of the company.

**Source:** L. 25: p. 313, § 3. CSA: C. 87, § 44. CRS 53: § 72-2-4. C.R.S. 1963: § 72-2-3. L. 83: Entire section amended, p. 450, § 1, effective May 3. L. 92: (1) amended, p. 1549, § 39, effective May 20. L. 96: Entire section amended, p. 97, § 1, effective July 1. L. 2004: (1)(a), (1)(b), (1)(c), and (2)(f) amended, p. 1061, § 8, effective July 1.

**Cross references:** For requirement of deposit, see § 10-3-201; for certificate of deposit, see § 10-3-206.

#### ANNOTATION

**Securities deposited by an insurance company to protect its policyholders cannot be surrendered** until the last of the policyholders is satisfied in full, and the fact that the policies have been reinsured and that the company holds

sufficient funds to secure all outstanding policies, cannot avoid this conclusion. *Cochrane v. Pacific States Life Ins. Co.*, 93 Colo. 462, 27 P.2d 196 (1933).

**10-3-211. Deposit only admitted assets.** (1) Deposits made with the commissioner as permitted or required by law shall be only those admitted assets of the company that are securities eligible for the purpose of a deposit, as provided in section 10-3-235 (1) or (2). The company may deposit, withdraw, exchange, or substitute any security at any time if the total amount of securities remaining on deposit is no less than required by law.

(2) When a domestic insurance company reinsures all of its business in another company, the securities deposited by the reinsured company with the commissioner, subject to any existing liens against and restrictions upon them, may be assigned or transferred to the reinsuring company, and the latter company shall thereupon acquire all the rights, title, and interest of the reinsured company in and to such securities and shall be entitled to all the rights, benefits, and privileges of the reinsured company pertaining thereto. If a domestic company, having securities on deposit with the commissioner, reinsures all of its business, such securities may only be withdrawn, except for the purpose of exchange or substitution, upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made, and upon return of the company's certificate of authority to the commissioner.

(3) (Deleted by amendment, L. 2004, p. 1062, § 9, effective July 1, 2004.)

**Source:** L. 33: p. 611, § 1. CSA: C. 87, § 45. CRS 53: § 72-2-5. C.R.S. 1963: § 72-2-4. L. 69: p. 491, § 3. L. 2004: Entire section amended, p. 1062, § 9, effective July 1.

**10-3-212. Insolvency or impairment of stock insurance company.** A stock insurance company is deemed insolvent when its admitted assets are less than all of its liabilities, excluding from such liabilities the aggregate amount of its outstanding capital stock, and is deemed impaired when its admitted assets are less than its liabilities, including as a liability the aggregate amount of its outstanding capital stock, or when its surplus is less than the minimum requirements of section 10-3-201.

**Source:** L. 25: p. 315, § 5. CSA: C. 87, § 46. CRS 53: § 72-2-6. C.R.S. 1963: § 72-2-5. L. 69: p. 544, § 2.

**10-3-213. Investments eligible as admitted assets.** (1) Domestic insurance companies may invest their funds in the categories of assets described in sections 10-3-215 to 10-3-230 and 10-3-242. Every such investment shall be an admitted asset of the company; except that, if the section describing a category of asset contains a quantitative limitation, an investment in that category of asset shall be an admitted asset under that section to the extent that it does not exceed such limitation. Any such limitation shall apply only with respect to the category of assets described in that section and shall not constitute a general prohibition and shall not be applicable to any other section. Except as provided in section 10-3-237, any investment, or part thereof, that does not qualify under any of said sections shall not be an admitted asset under the provisions of this part 2. Except as specifically provided in this title (except article 15) and article 14 of title 24, C.R.S., a domestic insurance company shall not be prohibited from acquiring or holding an asset that is not an admitted asset, and such company may lend, pledge, sell, transfer, assign, hypothecate, dispose of, or exchange any asset acquired by it.

(2) Notwithstanding the provisions of subsection (1) of this section, an insurance company or other regulated entity to whom this section applies shall be required reasonably to diversify its investments made pursuant to sections 10-3-215 to 10-3-230 and 10-3-242 as to type and issue, and to maintain a sufficient degree of liquidity based on the nature of the business transacted. The commissioner may promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this subsection (2), taking into consideration the standards of the national association of insurance commissioners. The commissioner may require an insurer or other regulated entity to show compliance by



demonstrating that its investments are not overly concentrated in any one area, including without limitation the areas of duration, industry, issuer, or geographic location.

**Source:** **L. 69:** p. 491, § 5. **C.R.S. 1963:** § 72-2-19. **L. 85:** Entire section amended, p. 380, § 2, effective May 1. **L. 92:** Entire section amended, p. 1767, § 3, effective March 20; entire section amended, p. 1549, § 40, effective May 20. **L. 2004:** (1) amended, p. 901, § 16, effective May 21. **L. 2012:** (1) amended, (HB 12-1266), ch. 280, p. 1505, § 29, effective July 1.

**Editor's note:** (1) Amendments to this section by Senate Bill 92-90 and House Bill 92-1090 were harmonized.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-214. Quantitative investment limitations - manner of applying.** In applying the investment limitations set forth in this part 2, which are expressed as percentages of a company's admitted assets, there shall be used as a base the total of all assets of the company that would be admitted under this title (except article 15) and article 14 of title 24, C.R.S., without regard to such limitations and without regard to any condition or restriction set forth in section 10-3-237 (2), and asset values will be those values determined at the current annual statement date or, in case of any statement or examination as of a date other than an annual statement date, those values determined at such other date. In applying any investment limitation set forth in this part 2, which is expressed as a percentage of a company's surplus, the amount of the company's surplus shall be that determined at the current annual statement date or, in the case of any statement or examination as of a date other than an annual statement date, the amount determined at such other date.

**Source:** **L. 69:** p. 492, § 5. **C.R.S. 1963:** § 72-2-20. **L. 92:** Entire section amended, p. 1550, § 41, effective May 20. **L. 2004:** Entire section amended, p. 901, § 17, effective May 21. **L. 2012:** Entire section amended, (HB 12-1266), ch. 280, p. 1505, § 30, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-215. Bonds and other evidences of indebtedness.** (1) Domestic insurance companies may invest in lawfully issued interest-bearing bonds, including bonds which provide for imputed interest payable at maturity, revenue bonds, and debentures, and other evidences of indebtedness:

(a) Of the United States or any agency or instrumentality thereof, or of any state, territory, district, or political subdivision of the United States;

(b) Guaranteed or insured as to the payment of principal and interest by the United States or any agency or instrumentality thereof, or by any state, territory, district, or political subdivision of the United States;

(c) Of counties, districts, townships, municipalities, and political subdivisions within the states, territories, and districts of the United States; except that investment in special improvement district obligations shall be limited to those which have received a designation or rating equivalent to or better than those specified in subsection (2) (b) of this section or, if not so designated or rated, have a credit enhancement approved by the commissioner;

(d) Of the Dominion of Canada and provinces and districts thereof and of counties, districts, townships, municipalities, and political subdivisions thereof, or guaranteed or insured as to the payment of principal and interest by the dominion of Canada or by any province or district thereof;

(e) Of solvent institutions created under the laws of the United States or of any state, territory, or district thereof, or of the dominion of Canada or any province thereof, which institutions are not referenced in paragraph (a), (b), (c), or (d) of this subsection (1) and

which are not in default in the payment of interest on any of their bonds at the time the investment is made; but the aggregate value of all bonds and other evidences of indebtedness of any one such institution which may be admitted assets under this section shall not exceed three percent of the domestic insurance company's admitted assets, except as to those bonds and other evidences of indebtedness of insurance companies admitted to do business in any state of the United States or in the District of Columbia, for coinsurance or reinsurance purposes, in which case they shall not exceed the greater of three percent of the domestic insurance company's admitted assets or five percent of the debtor insurance company's admitted assets, or except as may be otherwise authorized under section 10-3-802;

(f) Of farm credit banks and banks for cooperatives, or other similar corporations organized under the laws of the United States;

(g) Repealed.

(h) Issued by, or guaranteed or insured as to the payment of principal and interest by, any foreign government other than those listed in paragraph (d) of this subsection (1); except that the aggregate value of all such bonds and other evidences of indebtedness which may be admitted assets pursuant to this paragraph (h) and paragraph (i) of this subsection (1) shall not exceed twenty percent of the domestic insurance company's admitted assets, and except that the aggregate amount of foreign investments that may be admitted assets pursuant to this paragraph (h) and to paragraph (i) of this subsection (1) in a single foreign jurisdiction shall not exceed:

(I) Ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating from a nationally recognized statistical rating organization recognized by the securities valuation office of the national association of insurance commissioners equivalent to securities valuation office rating 1 in the then current purposes and procedures manual of the securities valuation office; or

(II) Three percent of its admitted assets as to any other foreign jurisdiction.

(i) Of solvent foreign institutions other than those specified in paragraphs (e) and (j) of this subsection (1) which are not in default in the payment of interest on any of their bonds at the time the investment is made; except that the aggregate value of all such bonds and other evidences of indebtedness which may be admitted assets pursuant to this paragraph (i) and paragraph (h) of this subsection (1) shall not exceed twenty percent of the domestic insurance company's admitted assets, and except that the aggregate amount of foreign investments that may be admitted assets pursuant to this paragraph (i) and to paragraph (h) of this subsection (1) in a single foreign jurisdiction shall not exceed:

(I) Ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating from a nationally recognized statistical rating organization recognized by the securities valuation office of the national association of insurance commissioners equivalent to securities valuation office rating 1 in the then current purposes and procedures manual of the securities valuation office; or

(II) Three percent of its admitted assets as to any other foreign jurisdiction.

(j) Issued by, or guaranteed or insured as to the payment of principal and interest by, the international bank for reconstruction and development, the inter-American development bank, the African development bank, or the Asian development bank; but the aggregate value of all bonds and other evidences of indebtedness which may be admitted assets pursuant to this paragraph (j) shall not exceed five percent of the domestic insurance company's admitted assets.

(2) Domestic insurance companies may invest in mortgage-backed securities, including, without limitation, collateralized mortgage obligations and other obligations for the payment of money secured by participation certificates or loans secured, directly or indirectly, by real estate mortgages or deeds of trust if, at the time the investment is made, the entity issuing the obligation is not in default in the payment of interest on the obligation and:

(a) The obligation or each participation certificate or loan is fully guaranteed or insured as to principal and interest by the United States or by any state, territory, or district thereof, or by any agency, instrumentality, or political subdivision of one or more of the foregoing; but the aggregate value of any one issue of such obligations which may be admitted assets



pursuant to this paragraph (a) shall not exceed five percent of the domestic insurance company's admitted assets; or

(b) The obligations have received a "1" or "2" quality designation by the securities valuation office of the national association of insurance commissioners as set forth in its most recently published valuations of securities manual or are rated investment grade in Standard & Poor's (at least BBB-) or Moody's (at least Baa3) bond guides, or have received comparable designations or ratings in the event the method of presenting such designations or ratings later changes or such designations or ratings are provided by successor entities, or have received comparable investment grade designations or ratings by any similar organization approved by the commissioner; but the aggregate value of any one issue of such obligations which may be admitted assets pursuant to this paragraph (b) shall not exceed three percent of the domestic insurance company's admitted assets.

**Source:** L. 69: p. 492, § 5. C.R.S. 1963: § 72-2-21. L. 75: (1)(e) amended, p. 335, § 1, effective July 1. L. 81: (1)(e) amended and (1)(g) repealed, pp. 527, 531, §§ 2, 11, effective July 1. L. 86: IP(1) amended, p. 560, § 1, effective April 3. L. 91: (1) amended and (2) added, p. 1174, § 1, effective May 18. L. 92: (1)(e) and (1)(i) amended, p. 1767, § 4, effective March 20. L. 2000: (1)(h) and (1)(i) amended, p. 1729, § 2, effective August 15.

**10-3-215.5. Investments in medium- and lower-grade obligations.** (1) As used in this section, unless the context otherwise requires:

(a) "Aggregate amount of medium-grade and lower-grade obligations" means the aggregate statutory statement value of medium-grade and lower-grade obligations.

(a.3) "Domestic obligation" means an obligation described in section 10-3-215 (1) (a) to (1) (f).

(a.7) "Foreign obligation" means an obligation described in section 10-3-215 (1) (h) and (1) (i).

(b) "Lower-grade obligation" means an obligation rated four, five, or six by the securities valuation office of the national association of insurance commissioners or by any successor entity.

(c) "Medium-grade obligation" means an obligation rated three by the securities valuation office of the national association of insurance commissioners or by any successor entity.

(d) "Obligation" means a bond or other type of evidence of indebtedness referred to in section 10-3-215.

(2) Without the written approval of the commissioner, no domestic insurance company shall acquire, directly or indirectly, any medium-grade or lower-grade obligation of any institution if, at the time of acquisition, after giving effect to any such acquisition:

(a) The aggregate amount of all medium-grade and lower-grade domestic and foreign obligations then held by the domestic insurance company would exceed twenty percent of its admitted assets with the aggregate amount of such foreign obligations being no more than ten percent of its admitted assets; or

(b) The aggregate amount of all lower-grade domestic and foreign obligations then held by the domestic insurance company would exceed ten percent of its admitted assets with the aggregate amount of such foreign obligations being no more than five percent of its admitted assets; or

(c) The aggregate amount of all domestic and foreign obligations held by the domestic insurance company which were rated five or six by the securities valuation office of the national association of insurance commissioners or by any successor entity would exceed three percent of its admitted assets with the aggregate amount of such foreign obligations being no more than one and one-half percent of its admitted assets; or

(d) The aggregate amount of all domestic and foreign obligations held by the domestic insurance company which were rated six by the securities valuation office of the national association of insurance commissioners or by any successor entity would exceed one percent of its admitted assets with the aggregate amount of such foreign obligations being no more than one-half percent of its admitted assets.

(3) Attaining or exceeding the limit of any one of the categories listed in paragraphs (a) to (d) of subsection (2) of this section shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(4) Without the written approval of the commissioner, no domestic insurance company shall acquire, directly or indirectly, any medium-grade or lower-grade obligation of any institution if, at the time of acquisition, after giving effect to any such acquisition:

(a) The aggregate amount of all medium-grade and lower-grade obligations issued, guaranteed, or insured by such institution and held by the domestic insurance company exceeds one percent of the domestic insurance company's admitted assets; or

(b) The aggregate amount of all lower-grade obligations issued, guaranteed, or insured by such institution and held by the domestic insurance company exceeds one-half of one percent of the domestic insurance company's admitted assets.

(5) Nothing contained in this section shall prohibit a domestic insurance company from acquiring any obligation which it has committed to acquire if such insurance company would have been permitted to acquire that obligation pursuant to this section on the date on which such insurance company committed to purchase that obligation; and nothing in this section shall require a domestic insurance company to sell or otherwise dispose of any investment.

(6) Notwithstanding any other provision of this section, a domestic insurance company may acquire, whether or not through a restructuring, an obligation of an institution in which such insurance company already has one or more obligations, if such obligation is acquired in order to protect an investment previously made in the obligations of such institution so long as all such acquired obligations of an institution do not exceed one-half of one percent of the insurer's admitted assets.

(7) Nothing contained in this section shall prohibit a domestic insurance company from acquiring an obligation as a result of a restructuring of a medium- or lower-grade obligation already held.

(8) The board of directors of any domestic insurance company which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium-grade and lower-grade obligations shall adopt a written plan for the acquisition of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain appropriate diversification standards applied to all of its investments, which may include, for example, standards for issuer, industry, duration, liquidity, and geographic location.

(9) All obligations acquired by a domestic insurance company shall be rated in accordance with the standards of the securities valuation office or any successor entity.

(10) The provisions of this section shall take effect July 1, 1992, and shall apply to all investments in obligations acquired on or after that date.

**Source: L. 92:** Entire section added, p. 1768, § 5, effective July 1. **L. 2000:** (1)(a.3) and (1)(a.7) added and (2) amended, p. 1731, §§ 3, 4, effective August 15.

**10-3-216. First liens on real property.** (1) Domestic insurance companies may invest in loans secured by first liens on real property, subject to the following provisions:

(a) Except as provided in paragraph (b) of this subsection (1), no such loan shall exceed eighty percent of the value of the real property; except that, in the case of property which is improved with a residential building (which for the purposes of this paragraph (a) shall be deemed to include a condominium unit) designed for occupancy by not more than four dwelling units, the loan shall not exceed ninety percent of the value of the real property. In all cases, value shall be evidenced by the written appraisal of a qualified real estate appraiser, who may be an employee of the company; except that, in the case of property to be qualified under this section by reason of producing oil, gas, or other minerals, the appraisal must be made by an engineer or geologist qualified in the relevant field, and, in the case of commercial properties of over one hundred thousand dollars in value, the appraiser must be a member of an institute of real estate appraisers, or its equivalent.

(b) If a company sells any real property which is an admitted asset at the time of sale, the company may upon such sale make a purchase money loan, secured by a lien upon the



property up to one hundred percent of the appraised value thereof, but any excess of the amount of the loan over the admitted asset value of the property at the time of sale shall not be taken into account in valuing the loan. Profits on any such sale shall not be deemed surplus until realized in cash or equivalent.

(c) The land to which the first lien pertains shall be improved with permanent buildings, or be used for agriculture or pasture, or be income-producing land, including, but not limited to, land used for parking lots or for the production of oil, gas, or other minerals; but loans secured by first liens on land not meeting any of the foregoing requirements of this paragraph (c) may be admitted assets of the company under this part 2 in an amount not exceeding in the aggregate five percent of its admitted assets.

(d) Any improvements shall be insured against loss or damage by fire, for the benefit of the lending company, by some reliable fire insurance company for an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is less.

(e) The company shall hold such documents as are necessary to evidence its ownership of such first liens. If, under the law of the state in which the real property is situated, it is necessary to the validity of the lien to record a mortgage or assignment thereof, the company shall record such mortgage or assignment in compliance with such law.

(f) The entire obligation secured by a first lien on real estate shall be owned by the company; except that the company may own such an obligation in common with other participants if, at the time of the company's investment, each participant is:

(I) A bank whose depositors are insured by the federal deposit insurance corporation;

(II) A savings and loan association whose members are insured by the federal deposit insurance corporation or any successor agency thereto;

(III) A trust for a pension or other benefit plan for employees qualified under section 401 of the federal "Internal Revenue Code of 1986", as amended;

(IV) An insurance company organized in any state of the United States, the District of Columbia, or any province of Canada; or

(V) A corporation or association owned wholly by one or more of the entities or one or more wholly owned subsidiaries of the entities specified in subparagraph (I), (II), or (IV) of this paragraph (f).

(g) The instrument evidencing the loan secured by a first lien on real property shall provide for annual or more frequent periodic payments of principal and interest, so as to amortize the obligation over a specific period of time, and shall require that repayment of principal commence on a date not later than five years after the date the loan is made. In the case of a loan secured by a lien on a leasehold estate, the fixed payments under the loan instrument shall be sufficient to repay the indebtedness within the unexpired term of the lease. As to all loans made on or after July 1, 1973, except those made pursuant to binding commitments made prior to such date, the instrument evidencing the loan secured by a first lien on real property shall provide for payment of interest, which interest may be at a variable rate, at regular intervals no less frequent than annual, commencing on a date not later than one year from the date the loan is made, and for repayment of principal as follows: In the case of a loan secured by a lien on a fee simple interest in real property, the instrument shall provide for repayment of principal at least as rapidly as would be required under a repayment schedule calling for repayment of the entire principal within thirty-five years after the date the loan is made or within the actual term of the loan if shorter than thirty-five years, and calling for payment in equal installments at regular intervals not less frequent than annually, commencing no later than five years from the date the loan is made; in the case of a loan secured by a lien on a leasehold estate, the instrument shall provide for repayment of principal at least as rapidly as would be required under a repayment schedule calling for repayment of the entire principal within thirty-five years from the date the loan is made, or within the unexpired term of the lease if such unexpired term is less than thirty-five years, or within the actual term of the loan if shorter than either thirty-five years or the unexpired term of the lease, and calling for payment in equal installments at regular intervals not less frequent than annually, commencing no later than five years from the date the loan is made.

(h) If before a loan is paid the value of the real property, including any improvements thereon, securing the loan depreciates, the loan may nevertheless be carried as an admitted asset, but not for an amount exceeding seventy-five percent of the current value of the real property.

(i) The maximum amount of a loan or loans made, directly or indirectly, to any one obligor which may be an admitted asset of a company under this section shall not exceed two percent of such company's admitted assets. If, on April 5, 1973, a company has outstanding a loan to any one obligor which, except for the provisions of this paragraph (i) would be admitted assets under this section, or a binding commitment for any such loan, any such loan outstanding on such date shall continue to be admitted assets under this section, and any such loan made on or after April 5, 1973, pursuant to any such binding commitment shall be admitted assets under this section.

(j) The aggregate amount of investments of a company which may be admitted assets under this section shall not exceed fifty percent of the company's admitted assets. If a company has outstanding investments which, in the aggregate, exceed fifty percent of the company's admitted assets on July 1, 1993, the company shall reduce the excess amount invested in first liens on real property at the rate of at least twenty percent of the July 1, 1993, excess each year for five years until the first liens on the real property portfolio do not exceed fifty percent of the company's admitted assets. If a fraternal benefit society has outstanding investments which, in the aggregate, exceed sixty percent of the society's admitted assets on July 1, 1993, the society shall reduce the excess amount invested in first liens on real property at the rate of at least twenty percent of the July 1, 1993, excess each year for five years until the first liens on the real property portfolio do not exceed sixty percent of the society's admitted assets. Thereafter, a fraternal benefit society shall, over a five-year period, further reduce its outstanding aggregate investments in first liens on real property to fifty percent of its admitted assets by twenty percent per year, unless an exemption is granted by the commissioner. Such exemption shall be based on an analysis of the financial condition of the fraternal society.

**Source:** L. 69: p. 492, § 5. C.R.S. 1963: § 72-2-22. L. 71: p. 708, § 1. L. 73: pp. 839, 840, §§ 1, 2. L. 75: (1)(j) amended, p. 339, § 1, effective June 26; (1)(f) R&RE, p. 335, § 2, effective July 1. L. 81: (1)(a) amended, p. 532, § 1, effective April 1; (1)(f) and (1)(j) amended, p. 528, § 3, effective July 1. L. 93: (1)(f)(II) amended, p. 1772, § 25, effective June 6; (1)(i) and (1)(j) amended, p. 574, § 2, effective July 1. L. 2000: (1)(f)(III) amended, p. 1839, § 7, effective August 2. L. 2004: (1)(f)(II) amended, p. 148, § 51, effective July 1.

**10-3-217. Federally guaranteed or insured real estate loans.** Domestic insurance companies may invest in obligations for the payment of money secured by real estate mortgages or deeds of trust which are either guaranteed or insured by the United States, any state, territory, or district thereof, or by any agency, instrumentality, or political subdivision of one or more of the foregoing, if any such investment which is in excess of the value limitation set forth in section 10-3-216 (1) (a) is so insured or guaranteed.

**Source:** L. 69: p. 494, § 5. C.R.S. 1963: § 72-2-23.

**10-3-218. Real estate for use in company's business.** Domestic insurance companies may invest in real estate for the accommodation of the company's business, but the aggregate investments by a company that may be admitted assets under this section shall not exceed fifteen percent of the company's admitted assets unless the commissioner has given prior approval of a greater aggregate investment. Any space in the company's home office building that is not required for its use may be rented to others. The commissioner may approve investments under this section which in the aggregate will not exceed twenty percent of the company's admitted assets, upon a finding that such investments do not render the company's operation hazardous, or its condition unsound, to the public or its policyholders.



**Source:** L. 69: p. 494, § 5. C.R.S. 1963: § 72-2-24. L. 81: Entire section amended, p. 529, § 4, effective July 1. L. 2001: Entire section amended, p. 280, § 3, effective March 30.

**10-3-219. Real estate acquired in satisfaction of indebtedness.** (1) The following shall be admitted assets:

(a) Such real estate as has been mortgaged to the company in good faith, by way of security for loans or for money due it;

(b) Such real estate as is conveyed to the company in good faith in satisfaction of debts previously contracted in the course of its business;

(c) Such real estate as is purchased at sales under execution issued on judgments and decrees based upon debts due, or at foreclosure sales under mortgages or deeds of trust owned or held by the company or obtained by redemption as junior judgment creditor or mortgagee.

**Source:** L. 69: p. 494, § 5. C.R.S. 1963: § 72-2-25.

**10-3-220. Real estate for production of income.** (1) A domestic insurance company may invest in real estate for the production of income, subject to the following provisions:

(a) The aggregate investments by a company which may be admitted assets under this section shall not exceed ten percent of the company's admitted assets.

(b) The investment in any single parcel of real estate which may be an admitted asset under this section shall not exceed five percent of the company's admitted assets.

(c) Real estate qualifying as an admitted asset under section 10-3-218 or 10-3-219 may, at the option of the company, be an admitted asset under this section if such real estate is otherwise eligible under the provisions of this section.

(2) "Real estate", as used in this section, means lands held in fee simple or under leasehold estates, and improvements thereon or to be placed thereon, consisting only of store or other business buildings, or of dwellings, apartment houses, tenements, or other housing accommodations.

**Source:** L. 69: p. 494, § 5. C.R.S. 1963: § 72-2-26. L. 2001: (2) amended, p. 281, § 4, effective March 30.

**10-3-221. Tangible personal property for production of income. (Repealed)**

**Source:** L. 69: p. 494, § 5. C.R.S. 1963: § 72-2-27. L. 2001: (1) repealed, p. 281, § 5, effective March 30.

**10-3-222. Policy loans. (Repealed)**

**Source:** L. 69: p. 495, § 5. C.R.S. 1963: § 72-2-28. L. 71: p. 709, § 1. L. 2001: Entire section repealed, p. 281, § 6, effective March 30.

**10-3-223. Accounts in building or savings and loan associations. (Repealed)**

**Source:** L. 69: p. 495, § 5. C.R.S. 1963: § 72-2-29. L. 77: Entire section amended, p. 456, § 3, effective July 1. L. 2001: Entire section repealed, p. 281, § 7, effective March 30.

**10-3-224. Time deposits. (Repealed)**

**Source:** L. 69: p. 495, § 5. C.R.S. 1963: § 72-2-30. L. 88: Entire section amended, p. 401, § 1, effective March 24. L. 2001: Entire section repealed, p. 282, § 8, effective March 30.

**10-3-225. Transportation equipment interests.** Domestic insurance companies may invest in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such transportation equipment; but the aggregate investments by a company which may be admitted assets under this section shall not exceed ten percent of the company's admitted assets, and the investment in the obligations or certificates of or in relation to any one transportation company, which may be admitted assets under this section, shall not exceed two percent of the investing company's admitted assets.

**Source:** L. 69: p. 495, § 5. C.R.S. 1963: § 72-2-31.

**10-3-226. Stocks.** (1) Domestic insurance companies may invest in preferred and common stocks issued by any solvent corporation created under the laws of the United States or of any state of the United States, the District of Columbia, or of Canada or any province thereof, but the aggregate value of all such stocks which may be admitted assets under this section shall not exceed ten percent of the company's admitted assets. For the purpose of such limitation on aggregate value, a company may, if it so elects, determine the value of all its stocks which may be admitted assets under this section on the basis of the aggregate initial cost of the stocks in lieu of determining the value of all of such stocks as provided in section 10-3-214.

(2) Notwithstanding the provisions of subsection (1) of this section, a domestic fire, casualty, or multiple-line insurance company may invest an additional twenty-five percent of its admitted assets in preferred and common stocks of any corporation organized under the laws of the United States, any state, territory, or possession of the United States, the District of Columbia, or the Dominion of Canada or any province thereof.

(3) All investments authorized by subsections (1) and (2) of this section are subject to the following restrictions and limitations at the time of investment:

(a) The corporation issuing such preferred stock shall meet the following qualifications:

(I) If the class of preferred stock is cumulative preferred, the corporation must not be in arrears as to its dividends, or, if the class of preferred stock is noncumulative preferred, the corporation must have paid full dividends on that class of preferred stock in each of the last three years, or, if that class of noncumulative preferred stock has been outstanding less than three years, the commissioner of insurance must have approved the purchase thereof.

(II) If there is a sinking fund for that class of preferred stock, the corporation's sinking fund payments shall be on a current basis.

(III) (Deleted by amendment, L. 81, p. 529, § 5, effective July 1, 1981.)

(b) The corporation issuing such common stock shall meet the following qualifications:

(I) The corporation shall have had net earnings available for dividends on its outstanding common stock in each of the three fiscal years next preceding the date of acquisition.

(II) The stock shall be registered on a national securities exchange or regularly traded on a national or regional basis.

(III) (Deleted by amendment, L. 81, p. 529, § 5, effective July 1, 1981.)

(c) If there is a rise in the market value of the aggregate stock investments of a domestic insurance company and if the current market value of the aggregate investments of such company in common and preferred stock exceeds fifty percent of the admitted assets of such company as valued on December 31 of any year, then such company shall, on or before March 1 of the following year, liquidate a portion of such investments so that the market value of such stock investments does not exceed fifty percent of the company's admitted assets.

(d) Investments in common stock in any one corporation, at the time of investment, shall not exceed two percent of the admitted assets of the investing insurance company, and, at the time of investment, an insurance company shall not purchase more than five percent of the outstanding shares of common stock of any one corporation.

(e) This section shall not apply to investments made pursuant to the provisions of section 10-3-802.



**Source:** L. 69: p. 495, § 5. C.R.S. 1963: § 72-2-32. L. 71: p. 755, § 2. L. 73: pp. 842, 1408, §§ 1, 52, 53. L. 75: Entire section R&RE, p. 336, § 3, effective July 1. L. 81: (3)(a) and (3)(b) amended, p. 529, § 5, effective July 1.

**10-3-227. Stock for purpose of reinsurance, consolidation, or merger.** (1) Domestic insurance companies may invest in stock in any other insurance company authorized to do a similar business to that of the investing company, subject to the following provisions:

(a) No greater amount shall be applied to the acquisition of such stock than the investing company's capital and surplus in excess of the minimum required by law; except that, the commissioner may, by written order prior to such acquisition, permit the application of a greater amount thereto.

(b) A reinsurance, consolidation, or merger between the investing company and such other insurance company shall be effected within two years of the acquisition of such stock or within such extension of such period as may be granted by the commissioner.

**Source:** L. 69: p. 496, § 5. C.R.S. 1963: § 72-2-34.

**10-3-228. Collateral loans.** (1) Domestic insurance companies may invest in collateral loans secured by the pledge of any one or more investments allowed for collateral loans, as provided by nationally recognized insurance statutory accounting principles, subject to the following provisions:

(a) The collateral pledged shall be legally assignable and validly assigned to the lending company.

(b) As at date made, no such loan shall exceed in amount seventy-five percent of the value of the collateral pledged.

(c) At no time shall the admitted value of a collateral loan be in excess of the actual market value of the collateral pledged.

(d) If any of the collateral pledged and taken into account to qualify a loan as an admitted asset under this section is of a category which, if invested in directly, would be subject to a limitation expressed as a percentage of the investing company's admitted assets, then, for the purpose of such limitation, so much of the loan as is so qualified by such collateral will be deemed to be a direct investment in such category.

(e) No loan shall qualify as an admitted asset under this section unless limited to a term not exceeding five years or, if less, the maturity date, if any, of any of the collateral taken into account in qualifying the loan as an admitted asset under this section.

**Source:** L. 69: p. 496, § 5. C.R.S. 1963: § 72-2-35. L. 2002: IP(1) amended, p. 1012, § 5, effective June 1. L. 2004: IP(1) amended, p. 1063, § 10, effective July 1.

**10-3-228.5. Securities lending - repurchase - reverse repurchase - dollar roll transactions.** (1) For the purposes of this section, unless the context otherwise requires:

(a) "Dollar roll transaction" means two simultaneous transactions with settlement dates no more than ninety-six days apart so that in one transaction an insurer sells to a business entity and in the other transaction the insurer is obligated to purchase, from the same business entity, substantially similar securities of the following types:

(I) Mortgage-backed securities issued, assumed, or guaranteed by the government national mortgage association, the federal national mortgage association, the federal home loan mortgage corporation, or their respective successors; and

(II) Other mortgage-backed securities referred to in section 106 of title I of the "Secondary Mortgage Market Enhancement Act of 1984", 15 U.S.C. sec. 77r-1, as amended.

(b) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

(c) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(d) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(2) An insurer may engage in securities lending, repurchase, reverse repurchase, and dollar roll transactions as set forth in this section. The insurer shall enter into a written agreement for securities lending, repurchase, reverse repurchase, and dollar roll transactions. Such agreements shall require that each transaction terminate no more than one year from its inception.

(3) Cash received in a transaction under this section shall be invested in accordance with this article and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes.

(4) So long as the transaction remains outstanding, the insurer, or its agent or custodian, shall maintain as acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants' trust company, or other securities depositories approved by the commissioner, any of the following:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(5) The limitations of section 10-3-215 (1) (e) and section 10-3-215.5 shall not apply to the business entity counter-party exposure created by transactions under this section. An insurer shall not enter into a transaction under this section, other than a dollar roll transaction, if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then loaned, sold to, or purchased from any one business entity counter-party under this section would exceed five percent of its admitted assets; and in calculating the amount sold to or purchased from a business entity counter-party under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent of its admitted assets.

(6) The amount of collateral required for securities lending, repurchase, and reverse repurchase transactions is the amount required pursuant to the provisions of the purposes and procedures manual of the national association of insurance commissioners' securities valuation office or pursuant to a successor to such publication.

**Source:** L. 2001: Entire section added, p. 282, § 9, effective March 30.

**10-3-229. Investments for purposes of compliance in other jurisdictions.** Admitted assets shall consist of such other securities and investments as may be necessary to comply with the laws or the departmental rules of other states or nations in which the company may do business.

**Source:** L. 69: p. 497, § 5. C.R.S. 1963: § 72-2-36.

**10-3-230. Additional investments.** (1) Domestic insurance companies may invest in any additional investments, except items specifically defined as nonadmitted assets in this title (except article 15) and article 14 of title 24, C.R.S., without regard to any limitation, condition, restriction, or exclusion set forth in sections 10-3-215 to 10-3-229 and 10-3-242, and regardless of whether the same or a similar type of investment has been included in or omitted from any such section, subject to the following provisions:



(a) The total amount of indebtedness secured by a lien on any single parcel of real property is an admitted asset only to the extent that such indebtedness does not exceed the value limitation set forth in section 10-3-216 (1) (a).

(a.1) Notwithstanding the provisions of paragraph (a) of this subsection (1), indebtedness, subject to the provisions of section 10-3-216 (1) (h), is an admitted asset only to the extent that such indebtedness does not exceed ninety-five percent of the current value of the real property. The aggregate investment by a company which may be admitted assets under this paragraph (a.1) shall not exceed twenty percent of the limits allowable under paragraph (c) of this subsection (1).

(b) The amount of indebtedness secured by a pledge of any collateral shall be an admitted asset only to the extent that such indebtedness does not exceed the value limitation set forth in section 10-3-228 (1) (b).

(c) The aggregate investments by a company which may be admitted assets under this section shall not exceed the lesser of five percent of its admitted assets or fifty percent of the amount by which the sum of the par value of its outstanding capital stock, if any, and its surplus exceeds the sum of the minimum capital, if any, and the minimum surplus required of such company under the applicable provision of section 10-3-201.

(d) In no event shall the admitted asset value of investments in loans secured by first liens on real property exceed the value limitations as set forth in section 10-3-216 (1) (i) and (1) (j).

**Source:** L. 69: p. 497, § 5. C.R.S. 1963: § 72-2-37. L. 70: p. 120, § 17. L. 71: p. 710, § 1. L. 81: IP(1) amended, p. 530, § 6, effective July 1. L. 85: IP(1) amended, p. 380, § 3, effective May 1. L. 92: IP(1) amended, p. 1550, § 42, effective May 20. L. 93: (1)(a.1) and (1)(d) added, p. 573, § 1, effective July 1. L. 2002: IP(1) amended, p. 1012, § 6, effective June 1. L. 2004: IP(1) amended, p. 1063, § 11, effective July 1. L. 2012: IP(1) amended, (HB 12-1266), ch. 280, p. 1506, § 31, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-231. Valuation of investments.** (1) (a) Subject to the provisions of paragraphs (b), (c), and (d) of this subsection (1), all obligations having a fixed term and rate may, if not in default as to principal or interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

(b) The purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus brokerage charges paid in the acquisition of such obligations.

(c) No such obligation shall be carried at above the call price for the entire issue during any period within which the obligation may be so called, and premiums paid at purchase shall be amortized by the scientific method to the first call date at which the entire issue may be redeemed.

(d) Obligations subject to amortization under the published findings of the national association of insurance commissioners shall be carried at their amortized values. Obligations which do not qualify for amortization shall be reported at their market value or a book value based on an amortized computation, whichever is lower.

(2) (a) Common stocks shall be valued at their market value, as determined by customary method, or, at the option of the company, they may be carried at cost if cost is less than market value. If no publicly traded market quotation is available, the value of the stocks shall be based on the pro rata share of the issuing company's net worth as shown by its audited financial statement or, in the case of an insurance company, the pro rata share of its statutory net worth.

(b) Preferred stocks shall be valued in accordance with procedures promulgated annually by the valuations committee of the national association of insurance commissioners.

(3) Other property purchased by a company may be valued at not more than its cost plus the cost of capitalized additions and permanent improvements, less depreciation. Depreciation shall be computed under the straight line method or, at the option of the company, under any other method resulting in larger accumulated depreciation at any given time. Depreciation of any buildings shall be based upon an estimated useful life of not more than fifty years.

(4) Property acquired in satisfaction of a debt shall be valued at its fair market value or the amount of the debt, including capitalized taxes and expenses, whichever amount is less.

(5) Property originally acquired in satisfaction of a debt and subsequently transferred to qualification under section 10-3-220 or 10-3-230 shall be valued as provided in subsection (3) of this section, and its cost shall be deemed to be its value at time of transfer determined under subsection (4) of this section.

(6) To the extent investments are valued by the securities valuation office of the national association of insurance commissioners, all investments owned by domestic insurance companies shall be valued in accordance with the most recently published valuations of the securities valuation office. Other investments not valued by the securities valuation office shall be valued as otherwise is provided in this section, or, if not otherwise provided in this section, in accordance with procedures promulgated by the national association of insurance commissioners.

**Source:** L. 69: p. 497, § 5. C.R.S. 1963: § 72-2-38. L. 71: p. 711, § 1. L. 81: (2)(a) amended, p. 530, § 7, effective July 1. L. 91: (6) added, p. 1247, § 8, effective July 1.

**10-3-232. Liens for certain purposes permitted.** For the purposes of section 10-3-216, the existence of any lien existing by law, for the payment of any bonds, indebtedness, or assessments of, or created by a levy of, any special improvement district, any tunnel district, any conservation district, any irrigation district, any other district or territory, any municipality or quasi-municipality, or any state in which any real estate is situated, or by the United States, shall not prevent mortgages, trust deeds, or other encumbrances upon such real estate, if otherwise first liens, from being admitted assets of domestic insurance companies, if the property securing such mortgage, deed of trust, or other encumbrance is not delinquent in the payment of any installment or interest upon any such bonds, indebtedness, or assessments at the time such real estate loan is made.

**Source:** L. 69: p. 498, § 5. C.R.S. 1963: § 72-2-39.

**10-3-233. Disposition of certain real estate.** Any parcel of real estate qualifying as an admitted asset under section 10-3-218 or 10-3-219 at the time of its acquisition by the company and which has not been transferred to qualification as an admitted asset under any other section of this part 2 shall be sold within five years after such acquisition or within five years after its use for the accommodation of the company's business has entirely ceased, whichever is later, unless the company procures a certificate from the commissioner that the company's interests will suffer by such a sale, in which event the time may be extended as the commissioner shall direct in such certificate.

**Source:** L. 69: p. 498, § 5. C.R.S. 1963: § 72-2-40. L. 81: Entire section amended, p. 530, § 8, effective July 1.

**10-3-234. Approval and record of investments.** (1) No investment, loan, or sale thereof shall, except as to loans on a life insurance company's policies or annuity and supplementary contracts, be made by any domestic insurance company:

(a) Without the advance approval of its board of directors or of a committee appointed by such board and charged with the duty of making such investments, loans, or sales or of an officer charged with such duty; or



(b) Unless the transaction is:

(I) Transacted in compliance with a written policy or plan approved by its board of directors prior to the transaction; and

(II) Ratified by such board or by a committee appointed by such board charged with the duty of reviewing such investments, loans, and sales at a meeting held not less than quarterly.

(2) A permanent written record of all such investments, loans, and sales shall be maintained by the company.

**Source:** L. 69: p. 498, § 5. C.R.S. 1963: § 72-2-41. L. 2000: Entire section amended, p. 445, § 1, effective August 2.

**10-3-235. Certain admitted assets deemed securities for deposit purposes.** (1) For purposes of the minimum capital or guaranty fund deposit required by section 10-3-201, the following admitted assets shall be deemed to be securities eligible for such deposit: Any asset qualified as an admitted asset under sections 10-3-215 to 10-3-217 and 10-3-225.

(2) For purposes of optional reserve deposits permitted by section 10-7-101 (3) or other deposits permitted but not required by this title (except article 15) and article 14 of title 24, C.R.S., the following admitted assets, in addition to those referred to in subsection (1) of this section, shall be deemed to be securities eligible for such deposits: Any asset qualified as an admitted asset under section 10-3-220 or 10-3-226 to 10-3-228, and any life insurance policy, to the extent of the company's interest in the cash value thereof.

(3) If a company deposits the stock of a wholly owned insurance subsidiary with the commissioner as an optional reserve deposit, the value of such stock for purposes of such deposit shall be reduced by the value of any cash or securities owned by the subsidiary and on deposit with the commissioner or with the duly authorized officer in any other jurisdiction as a deposit of the subsidiary required or permitted by law.

(4) For purposes of all deposits required or permitted by this title (except article 15) and article 14 of title 24, C.R.S., assets shall be valued at their fair market value; except that, for purposes of optional reserve deposits permitted by section 10-7-101 (3), or other deposits permitted but not required by said references, bonds and mortgages shall be valued at their current book values under the methods used in determining admitted asset values for annual statement purposes.

**Source:** L. 69: p. 499, § 5. C.R.S. 1963: § 72-2-42. L. 92: (2) and (4) amended, p. 1550, § 43, effective May 20. L. 2002: (1) and (2) amended, p. 1013, § 7, effective June 1. L. 2004: (2) and (4) amended, p. 901, § 18, effective May 21. L. 2012: (2) and (4) amended, (HB 12-1266), ch. 280, p. 1506, § 32, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsections (2) and (4) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-236. Assets acquired through merger, consolidation, or reinsurance.** Any investments acquired after May 31, 1969, through merger, consolidation, or reinsurance that are not admitted assets under this title (except article 15) and article 14 of title 24, C.R.S., shall not be deemed admitted assets by reason of their acquisition through merger, consolidation, or reinsurance.

**Source:** L. 69: p. 499, § 5. C.R.S. 1963: § 72-2-43. L. 92: Entire section amended, p. 1551, § 44, effective May 20. L. 2004: Entire section amended, p. 902, § 19, effective May 21. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1506, § 33, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-237. Assets acquired under prior law.** (1) Notwithstanding any condition, restriction, or exclusion set forth in section 10-3-215 to 10-3-229, any asset held by a company on May 31, 1969, which met the requirements of the law in effect immediately prior to such date for an investment of the company's reserves, paid-up capital stock, and other liabilities shall be an admitted asset of the company, but, if any such asset is in a category for which a limitation expressed in terms of a percentage of admitted assets is prescribed in sections 10-3-216 (1) (c), 10-3-218, 10-3-220, 10-3-225, or 10-3-226, such asset shall be taken into account in determining whether any additional investment in such category made after May 31, 1969, may be an admitted asset under the section prescribing such limitation.

(2) Notwithstanding any other provision of this title (except article 15) and article 14 of title 24, C.R.S., any asset held by a company on May 31, 1969, that is not an admitted asset under section 10-1-102 (2) or subsection (1) of this section and that did not meet the requirements of the law in effect immediately prior to such date for an investment of the company's reserves, paid-up capital stock, and other liabilities but which, under such law, would have been taken into account as an asset in determining the surplus of the company shall be taken into account as an admitted asset at all times at which the company has aggregate admitted assets under section 10-1-102 (2) and subsection (1) of this section in an amount at least equal to the total of its reserves, paid-up capital stock, and all other liabilities.

(3) Notwithstanding any condition, restriction, or exclusion set forth in sections 10-3-215 (1) (e), 10-3-216 (1) (f), or 10-3-226, any asset held prior to July 1, 1975, or thereafter acquired by exercise of warrants or other rights which were held prior to that date which met or would have met the requirements of the law in effect immediately prior to July 1, 1975, for an investment of the company's reserves, paid-up stock, and other liabilities shall be an admitted asset of the company; but, if any such asset is in a category for which a limitation expressed in terms of a percentage of admitted assets is prescribed in such sections, such asset shall be taken into account in determining whether any additional investment in such category made after July 1, 1975, may be an admitted asset under the section prescribing such limitation.

(4) Notwithstanding any condition, restriction, or exclusion set forth in section 10-3-218, any asset held by a company on July 1, 1981, which met the requirements of the law in effect immediately prior to such date for an investment of the company qualified as an admitted asset under this part 2 shall remain an admitted asset; but such asset shall be taken into account in determining whether any additional investment made on or after July 1, 1981, may be an admitted asset under this part 2.

**Source:** L. 69: p. 499, § 5. C.R.S. 1963: § 72-2-44. L. 75: (3) added, p. 337, § 4, effective July 1. L. 81: (4) added, p. 530, § 9, effective July 1. L. 92: (2) amended, p. 1551, § 45, effective May 20. L. 2002: (2) amended, p. 1013, § 8, effective June 1. L. 2003: (2) amended, p. 616, § 10, effective July 1. L. 2004: (2) amended, p. 1063, § 12, effective July 1. L. 2012: (2) amended, (HB 12-1266), ch. 280, p. 1506, § 34, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (2) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-238. Refunds.** Whenever it appears to the satisfaction of the commissioner that, because of some mistake of fact, error in calculation, or erroneous interpretation of a statute of this or any other state, any insurer or other person engaged in the business of insurance in this state has paid to the commissioner or to the state of Colorado, pursuant to any provision of this title (except article 15) and article 14 of title 24, C.R.S., any taxes, fees, or other charges in excess of the amount legally chargeable against said insurer or other person during the one-year period immediately preceding the discovery of such overpayment, the commissioner has the authority to refund to such insurer or other person the amount of such excess by applying the amount thereof toward the payment of taxes, fees,



or other charges already due, or that may thereafter become due, from such insurer or other person until such excess has been fully refunded; or, at the commissioner's discretion, the commissioner may make a cash refund thereof.

**Source:** L. 71: p. 704, § 1. C.R.S. 1963: § 72-1-63. L. 92: Entire section amended, p. 1551, § 46, effective May 20. L. 2004: Entire section amended, p. 902, § 20, effective May 21. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1507, § 35, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-3-239. Subordinated indebtedness.** Domestic insurance companies may borrow and thereby assume a liability for the repayment of a sum of money upon a written agreement that the loan or advance with interest shall be repaid only out of surplus of the company in excess of such minimum surplus as is stipulated in and by the agreement. The agreement shall first be submitted to and approved by the commissioner. Repayment of principal or payment of interest may be made only with the approval of the commissioner when he is satisfied that the financial condition of the company warrants such action, but such approval may not be withheld if the company has and submits satisfactory evidence of surplus of not less than the amount stipulated in the repayment of principal or interest clause of the agreement. No loan or advance made under the provisions of this section or interest accruing thereon shall form a part of the legal liabilities of the company until authorized for payment by the commissioner, but, until such authorization, all statements published by the company or filed with the commissioner shall show the amount thereof then remaining as a special surplus account. Nothing in this section shall be construed to mean that a company may not otherwise borrow money, but the amount so borrowed with accrued interest thereon shall be carried by the company as a liability.

**Source:** L. 73: p. 837, § 1. C.R.S. 1963: § 72-1-66.

**Cross references:** For financial statements that must be filed, see § 10-3-208.

**10-3-240. Approval of investments.** (1) Except for investments made pursuant to sections 10-3-802 and 10-7-402, no domestic insurance company may, directly or indirectly, invest more than two percent of the company's admitted assets in stocks, bonds, debentures, notes, or other securities of its affiliates, as defined in section 10-3-801, without the prior approval of the commissioner. This section shall apply only to investments made on or after July 1, 1975.

(2) Notwithstanding the provisions of subsection (1) of this section, the commissioner may, upon written notice, require a domestic insurance company to obtain his prior approval for all investments in its affiliates if, based on past transactions of the insurance company, he determines that such investments might render the company's operation hazardous, or its condition unsound, to the public or its policyholders.

(3) Any domestic insurance company proposing to make an investment subject to approval under subsection (1) or (2) of this section shall give written notice thereof to the commissioner. If the commissioner has not approved or disapproved such investment within thirty days after receipt of such notice, the investment shall be deemed approved at the end of such thirty-day period.

**Source:** L. 75: Entire section added, p. 337, § 5, effective July 1.

**10-3-241. Prohibited investments. (Repealed)**

**Source:** L. 81: Entire section added, p. 531, § 10, effective July 1. L. 83: Entire section amended, p. 453, § 1, effective April 21. L. 2001: Entire section repealed, p. 286, § 10, effective March 30.

**10-3-242. Money market funds.** (1) For the purposes of this section, “money market fund” means an open-end, diversified management type of mutual fund, registered under the federal “Investment Company Act of 1940”, 15 U.S.C. 80a-1 et seq., as amended, objectives of which include the maintenance of a stable net asset value of a specified dollar amount per share and the shareholders of which may withdraw the value of their shares by check, telephone, or mail. Domestic insurance companies may invest in the shares of any one or more money market funds subject to the following limitations:

(a) Domestic insurance companies may invest in money market funds that, at the time the investment is made, are either listed or meet the eligibility conditions for listing on the U.S. direct obligations exempt list, U.S. direct obligations/full faith and credit exempt list, or class 1 list, in the “purposes and procedures manual” of the securities valuation office of the national association of insurance commissioners. Investments in the shares of any one money market fund qualifying under this paragraph (a) shall not exceed ten percent of the domestic insurance company’s total admitted assets.

(b) Investments in shares of any one money market fund not qualified under paragraph (a) of this subsection (1) shall not exceed five percent of the domestic insurance company’s total admitted assets. The aggregate value of all shares that may be admitted assets under this paragraph (b) shall not exceed ten percent of the domestic insurance company’s total admitted assets.

(c) At the time of an investment in a money market fund under this section, the aggregate value of a domestic insurer’s investment in such money market fund shall not exceed five percent of the shares of such money market fund.

(2) to (4) (Deleted by amendment, L. 2000, p. 1731, § 5, effective August 15, 2000.)

**Source:** L. 85: Entire section added, p. 379, § 1, effective May 1. L. 96: (1) amended, p. 555, § 4, effective April 24. L. 2000: Entire section amended, p. 1731, § 5, effective August 15.

**10-3-243. Derivative transactions - definitions - restrictions.** (1) For the purposes of this section, unless the context otherwise requires:

(a) “Counter-party exposure amount” means:

(I) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange or qualified foreign exchange, or cleared through a qualified clearinghouse as an over-the-counter derivative instrument. The net amount of credit risk shall equal:

(A) The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(B) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(II) If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counter-party is either within the United States or within a foreign jurisdiction listed in the purposes and procedures manual of the national association of insurance commissioners’ securities valuation office as eligible for netting, the net amount of credit risk shall be the greater of zero or the net sum of:

(A) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(B) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(III) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer’s fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

(b) (I) “Derivative instrument” means an agreement, option, instrument, or a series or combination thereof:



(A) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(B) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(II) (A) "Derivative instrument" includes options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, and futures.

(B) "Derivative instrument" does not include investments that are otherwise permitted pursuant to this article, nor does "derivative instrument" include repurchase, reverse repurchase, dollar roll, securities lending, or similar transactions.

(c) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce or manage:

(I) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring; or

(II) The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(d) "Income-generation transaction" means a derivative transaction that is intended to generate income or enhance return.

(e) "Replication transaction" means a derivative transaction or combination of derivative transactions that is intended to replicate the investment in one or more assets that an insurer is authorized to acquire or sell under this title. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.

(2) A domestic insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section by:

(a) Using derivative instruments to engage in hedging transactions;

(b) Entering into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income or equity assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying derivative instruments subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(I) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(II) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or is able to immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(III) Sales of covered puts on investments that the insurer is permitted to acquire under this section, if the insurer has placed into escrow, or entered into a custodial agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(IV) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(c) An insurer may use derivative instruments for replication transactions if any asset being replicated is subject to all the provisions and limitations on the making thereof specified in this title with respect to investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset.

(d) An insurer shall include all counter-party exposure amounts in determining compliance with general diversification requirements and medium- and low-grade investment limitations under this section.

(e) Any investments in derivative investments shall be made in accordance with a written derivative use plan approved by the company's board of directors. The derivative use plan shall be available for review by the commissioner upon request.

(f) The commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits in this section.

(3) Notwithstanding any provision of this section to the contrary, domestic insurers are prohibited from establishing margin accounts without the prior approval of the commissioner; except that the commissioner shall approve reasonable plans for domestic insurance companies to use financial futures or short selling techniques for hedging purposes.

**Source: L. 2001:** Entire section added, p. 283, § 9, effective March 30.

### PART 3

## UNIFORM GUARANTY DEPOSITS

**10-3-301. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Alien insurer" means any insurer incorporated or organized under the laws of any country other than the United States.

(2) "Domestic insurer" means any insurer incorporated or organized under the laws of this state.

(3) "Foreign insurer" means any insurer incorporated or organized under the laws of any state, as defined in this section, other than this state.

(4) "Insurer" means any insurance company except a life insurance company and includes any reciprocal or interinsurance exchange.

(5) "Policyholders" means claimants under the insurer's policies, claimants having claims which arise under or by reason of the insurer's policies, and obligees under its surety contracts.

(6) "State" means any state of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(7) "United States" means the states of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

**Source: L. 53:** p. 360, § 1. **CRS 53:** § 72-16-1. **C.R.S. 1963:** § 72-15-1.

**10-3-302. Deposits required - when.** No foreign or alien insurer authorized to transact business in this state, except a life insurance company, shall do such business unless it deposits and continuously maintains with the commissioner, or with an official of some other state of the United States designated by law to accept such deposit, cash, or securities having a fair market value of not less than the amounts required to be deposited for such insurers by the statutes of the state of Colorado. Such deposit shall be held for the benefit and protection of all the policyholders of such insurer in the United States. If the deposit is made with an official of some other state, the commissioner shall be furnished with and shall accept as evidence of deposit the certificate of such state officer under his hand and seal certifying that he holds such deposit for the benefit and protection of all the policyholders of such insurer in the United States. The provisions of this part 3 excepting life insurance companies from its stipulations shall not in any manner affect the duty and obligation of such companies to comply with the requirements of section 10-3-201, concerning cash capital, guaranty fund deposits, and surplus, and all such life insurance companies shall strictly comply therewith.

**Source: L. 53:** p. 361, § 2. **CRS 53:** § 72-16-2. **L. 57:** p. 466, § 1. **C.R.S. 1963:** § 72-15-2. **L. 69:** p. 500, § 7.

**10-3-303. Deposits with commissioner.** In the event any domestic insurer or alien insurer using this state as a state of entry into the United States is required, pursuant to the laws of any other state, country, province, district, or territory, to make a deposit differing in amount or character from the deposit required of domestic insurers by the laws of this state, such insurer may deposit with the commissioner cash or securities of the kind and



amount sufficient to enable the insurer to meet such requirement, and the commissioner shall issue a certificate as evidence of such deposit for filing with an official of such other state, country, province, district, or territory.

**Source:** L. 53: p. 361, § 3. CRS 53: § 72-16-3. C.R.S. 1963: § 72-15-3.

**Cross references:** For the deposit and safekeeping of deposits generally, see § 10-3-210.

**10-3-304. Depositaries - responsibility.** Upon request of the insurer, the commissioner may designate any solvent trust company or other solvent financial institution having trust powers domiciled in this state as the commissioner's depository to receive and hold any such deposit. Any such deposit so held shall be at the expense of the insurer. The state of Colorado shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this part 3 with the commissioner or in any such depository so designated by him.

**Source:** L. 53: p. 361, § 4. CRS 53: § 72-16-4. C.R.S. 1963: § 72-15-4.

**Cross references:** For the deposit and safekeeping of deposits generally, see § 10-3-210.

**10-3-305. Rights of depositors.** (1) So long as the insurer remains solvent and complies with this part 3, it may:

- (a) Demand, receive, sue for, and recover the income from securities or cash deposited in accordance with this part 3;
- (b) Exchange and substitute for the deposited cash or securities, or any part thereof, cash or eligible securities of equivalent or greater value; and
- (c) Inspect, at reasonable times, any deposit made in accordance with this part 3.

**Source:** L. 53: p. 362, § 5. CRS 53: § 72-16-5. C.R.S. 1963: § 72-15-5.

**10-3-306. Release of deposits.** (1) Any deposit made in this state under this part 3 shall be released and returned:

- (a) To the insurer upon extinguishment by reinsurance or otherwise of all liability of the insurer for the security of which the deposit is held; or
- (b) To the insurer to the extent such deposit is in excess of the amount required; or
- (c) Upon proper order of a court of competent jurisdiction to the receiver, conservator, rehabilitator, liquidator of the insurer, or any other properly designated official who succeeds to the management and control of the insurer's assets.

**Source:** L. 53: p. 362, § 6. CRS 53: § 72-16-6. C.R.S. 1963: § 72-15-6.

**10-3-307. Commissioner order release.** No such release shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any such release of any such deposit or part thereof so made by him in good faith.

**Source:** L. 53: p. 362, § 7. CRS 53: § 72-16-7. C.R.S. 1963: § 72-15-7.

## PART 4

### DELINQUENCIES

**10-3-401. Legislative declaration.** (1) The purpose of this part 4 is to make available to the commissioner supplemental remedial authority in instances of insurance company delinquencies of various kinds and degrees which demand regulation and control by the

commissioner in order to effectuate his responsibility that the business of insurance in this state is conducted according to law and his responsibility to protect the policyholders and public of this state. Most delinquencies are of such a kind or degree as to not justify the imposing of the remedy or sanction of loss of certificate or of rehabilitation or liquidation by court order. Either of the remedies of loss of certificate or of rehabilitation or liquidation by court order would in many instances defeat any realistic opportunity to rehabilitate the delinquent company. Such remedies are likely to destroy or diminish one or more of the following values or assets: The value of the insurance account or in-force business of the insurer; the value of the insurer as a going concern; the value of its agency force; and the value of other of its assets.

(2) The remedial steps provided by this part 4 are provided with the purpose in mind that insurance companies committing or suffering a delinquency be rehabilitated where and whenever possible with no loss of public confidence in the companies, and thus avoid the loss of a certificate of or the institution of rehabilitation or liquidation proceedings, by court order, against any insurance company, where possible. Furthermore, the remedial steps provided in this part 4 are provided to protect the assets of an insurer pending determination of whether or not the insurer can be successfully rehabilitated. In instances where rehabilitation or liquidation by court order are inevitable, it is nevertheless the purpose of this part 4 to allow preliminary or emergency supervision to prevent a dissipation of assets from taking place, and thus benefit the policyholders of the company. In such an instance, this part 4 shall operate in conjunction with part 5 of this article.

**Source:** L. 69: p. 544, § 3. C.R.S. 1963: § 72-29-1. L. 92: Entire section amended, p. 1424, § 5, effective July 1.

#### ANNOTATION

**An interinsurance exchange is included in the definition of insurance company** in former § 10-1-102 (4) (now § 10-1-102 (6)). Because § 10-13-114 applies the regulatory remedies in §§ 10-3-401 to 10-3-414 to interinsurance ex-

changes, the insurance commissioner has the discretion to rehabilitate an interinsurance exchange in the same manner as any other insurance company. *Alias Smith & Jones v. Barnes*, 695 P.2d 302 (Colo. App. 1984).

**10-3-402. Definitions.** All terms defined in section 10-1-102 shall have the same meaning in this part 4. As used in this part 4, unless the context otherwise requires:

(1) (Deleted by amendment, L. 92, p. 1425, § 6, effective July 1, 1992.)

(2) “Delinquency” means any act, omission, or condition, or combination thereof, which is contrary to the applicable laws of this state or any other state, including any regulation lawfully promulgated by the commissioner of insurance of any state or any other person or state agency having supervision of the business of insurance. It includes, but is not limited to, any such act, omission, or condition, or combination thereof, committed or created by or under the direction or authority of any insurance company or any officer or representative thereof. Specifically, it includes any act, omission, or condition, or combination thereof, which, although not otherwise proscribed by law, nevertheless renders the operation of the insurance company hazardous to the public or its policyholders.

(3) “Direct supervision” means the institution of control of an insurance company by order of the commissioner whereby one or more specifically enumerated acts shall be required of the company by order of the commissioner, or one or more specifically enumerated acts or decisions of the company shall not be permitted without prior written approval of the commissioner. In addition, such term includes the power to take all steps necessary to preserve, protect, and recover an insurance company’s assets as set forth in section 10-3-405 (2). It is a condition of control beyond normal regulation by the division of insurance and beyond the notifying of an insurance company of a determination of delinquency by the commissioner and supplying the company a list of requirements to abate the condition.

(4) “Rehabilitation” or “to rehabilitate” refers to the removal of an existing delinquency and restoration of the company to a condition of compliance with the law.



**Source:** L. 69: p. 545, § 3. C.R.S. 1963: § 72-29-3. L. 92: Entire section amended, p. 1425, § 6, effective July 1.

**10-3-403. Scope of part 4.** In addition to, and not to the exclusion of, any remedies or powers otherwise available to him, the commissioner may elect to take action against any insurance company formed or incorporated under the laws of this state or doing business in this state, whether authorized or not, which commits or suffers a delinquency according to the provisions of this part 4.

**Source:** L. 69: p. 545, § 3. C.R.S. 1963: § 72-29-2.

**10-3-404. Determination of delinquency - procedure.** Whenever evidence exists to the satisfaction of the commissioner that an insurance company has committed or suffered a delinquency, the commissioner may, upon determination of delinquency, notify the insurance company of his determination and furnish the insurance company a written list of requirements to abate his determination, and, if deemed necessary by the commissioner, he may place the insurance company under his direct supervision, with written notice to the company that it is so placed under direct supervision.

**Source:** L. 69: p. 545, § 3. C.R.S. 1963: § 72-29-4.

**10-3-405. Direct supervision.** (1) Any insurance company placed under direct supervision shall remain under direct supervision until all delinquencies are remedied, or until the commissioner deems such direct supervision no longer is necessary or desirable. During the period of direct supervision, the commissioner may appoint a supervisor other than himself to supervise the company and may provide that the company may not take any of the following actions without prior approval in writing of the commissioner or his duly appointed supervisor:

- (a) Dispose of, convey, or encumber any of its assets or its business in force;
- (b) Withdraw any of its bank accounts;
- (c) Lend any of its funds;
- (d) Invest any of its property;
- (e) Transfer any of its property;
- (f) Incur any debt, obligation, or liability;
- (g) Merge or consolidate with another company;
- (h) Enter into any new reinsurance contract or treaty.

(2) In addition to the power to require prior written approval of any of the actions set forth in subsection (1) of this section, the commissioner or the commissioner's duly appointed supervisor may take any further steps necessary to preserve, protect, and recover any assets or property of an insurance company under direct supervision.

**Source:** L. 69: p. 546, § 3. C.R.S. 1963: § 72-29-5. L. 92: Entire section amended, p. 1425, § 7, effective July 1.

**10-3-406. Protest of finding of delinquency.** In the event the insurance company protests the determination of delinquency by the commissioner, the commissioner shall stay his decision to place the insurance company under direct supervision and shall give the insurance company not less than fifteen days to show cause, at a hearing conducted by the commissioner, why such a determination should not be made. In cases of emergency, the commissioner may allow his determination of delinquency to stand until the insurance company, under the show cause order or at the hearing, gives sufficient proof that the commissioner's determination was erroneous.

**Source:** L. 69: p. 546, § 3. C.R.S. 1963: § 72-29-6.

**10-3-407. Costs of direct supervision.** All costs incident to the services of direct supervision shall be determined by the commissioner, and all reasonable costs so determined shall be a charge against the assets and funds of the insurance company so directly supervised.

**Source:** L. 69: p. 546, § 3. C.R.S. 1963: § 72-29-7.

**10-3-408. Conservatorship. (Repealed)**

**Source:** L. 69: p. 546, § 3. C.R.S. 1963: § 72-29-8. L. 92: Entire section repealed, p. 1426, § 8, effective July 1.

**10-3-409. Protest of order of conservatorship. (Repealed)**

**Source:** L. 69: p. 547, § 3. C.R.S. 1963: § 72-29-9. L. 92: Entire section repealed, p. 1427, § 9, effective July 1.

**10-3-410. Costs of conservatorship. (Repealed)**

**Source:** L. 69: p. 547, § 3. C.R.S. 1963: § 72-29-10. L. 92: Entire section repealed, p. 1427, § 10, effective July 1.

**10-3-411. Penalties for noncompliance.** Any insurance company or any officer or official thereof who willfully fails to comply with an order of the commissioner while such insurance company is under direct supervision of the commissioner is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than two years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

**Source:** L. 69: p. 547, § 3. C.R.S. 1963: § 72-29-11. L. 92: Entire section amended, p. 1427, § 11, effective July 1.

**10-3-412. Review of action while under direct supervision.** At any time during the period of direct supervision, or at any time pending abatement of the commissioner's determination of delinquency, the insurance company may request the commissioner, or his duly appointed deputy, to review an action taken or proposed to be taken by the direct supervisor, specifying in what manner the action complained of is believed not to be in the best interests of the insurance company. The insurance company shall be entitled to a hearing on such a request, if desired by the company.

**Source:** L. 69: p. 547, § 3. C.R.S. 1963: § 72-29-12. L. 92: Entire section amended, p. 1427, § 12, effective July 1.

**10-3-413. Appeal from final determination or order of commissioner.** (1) Upon exhausting all means of administrative appeal provided in this part 4, or in case the commissioner, under section 10-3-406, refuses to stay his order or determination pending the show cause order and hearing, the insurance company aggrieved by such determination or order may avail itself of the following procedure of appeal and none other:

(a) The insurance company shall file a petition setting forth its particular objection to the order or determination in the district court in and for the city and county of Denver, and not elsewhere, against the commissioner as defendant. Said action shall have precedence over all other cases on the docket of a different nature. The action shall not be limited to questions of law but shall be tried and determined upon a trial de novo.

(b) Either party to said action may appeal to the appellate court having jurisdiction of said cause of action, and said appeal shall have precedence in the appellate court over all causes of action of a different character pending in the appellate court.



(2) The commissioner is not required to give any appeal bond in any cause arising under this section.

**Source:** L. 69: p. 547, § 3. C.R.S. 1963: § 72-29-13. L. 92: IP(1) amended, p. 1428, § 13, effective July 1.

#### ANNOTATION

**Trial de novo limited.** Under subsection (1)(a), a trial de novo is limited to determining questions of illegality or impropriety on the part of the commissioner in placing the company

under an order of conservatorship. *Atlantic & Pac. Ins. Co. v. Barnes*, 666 P.2d 163 (Colo. App. 1983).

**10-3-414. Nondisclosure of reports and evidence during period of direct supervision or conservatorship.** Any other provision of law notwithstanding, the commissioner shall not divulge to the public any examination report, results of investigation, or other information received by the division of insurance on, about, or relating to any insurance company which would be detrimental to the efforts of rehabilitation of that company under this part 4.

**Source:** L. 69: p. 548, § 3. C.R.S. 1963: § 72-29-14.

**Cross references:** For the publication of reports and statements, see § 10-3-109.

#### PART 5

#### INSURERS' REHABILITATION AND LIQUIDATION

**Editor's note:** This part 5 was numbered as article 17 of chapter 72, C.R.S. 1963. The substantive provisions of this part 5 were repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**10-3-501. Legislative declaration - intents and purposes.** (1) This part 5 shall not be interpreted to limit the powers granted the commissioner by other provisions of law.

(2) This part 5 shall be liberally construed to effect the purpose stated in subsection (3) of this section.

(3) The purpose of this part 5 is to protect the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers, through:

(a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;

(b) Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;

(c) Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(d) Equitable apportionment of any unavoidable loss;

(e) Lessening the problems of interstate rehabilitation and liquidation of insurers by facilitating cooperation between states in the liquidation process and by extending the scope of personal jurisdiction over debtors of insurers outside this state;

(f) Regulation of the insurance business by means of laws relating to delinquency procedures and substantive rules relating to the insurance business generally; and

(g) The provision of a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this part 5 as part of the regulation of the business of insurance, the insurance industry, and insurers in this state.

(4) The general assembly finds, determines, and declares that proceedings in cases of insurer insolvency and delinquency are an integral aspect of the business of insurance and are of vital public interest and concern.

**Source:** L. 92: Entire part R&RE, p. 1428, § 14, effective July 1.

#### ANNOTATION

**This act establishes system for equitable and orderly liquidation** of domiciliary insurance companies by giving the commissioner of insurance the authority to collect all of the company's assets for ratable distribution among

claimants, including policy holders, general creditors, and stockholders. *Skandia Am. Reinsurance Corp. v. Barnes*, 458 F. Supp. 13 (D. Colo. 1978).

**10-3-502. Definitions.** As used in this part 5, unless the context otherwise requires:

- (1) "Ancillary state" means any state other than a domiciliary state.
- (2) "Creditor" means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, fixed or contingent, or absolute.
- (3) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.
- (4) "Doing business" includes any of the following acts, whether effected by mail or otherwise:
  - (a) Issuing or delivering contracts of insurance to persons resident in this state;
  - (b) Soliciting applications for such contracts or other negotiations preliminary to the execution of such contracts;
  - (c) Collecting premiums, membership fees, assessments, or other consideration for such contracts;
  - (d) Transacting matters subsequent to execution of such contracts and arising out of them; or
  - (e) Operating under a license or certificate of authority, as an insurer, issued by the commissioner or the insurance department of any state other than Colorado.
- (5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.
- (6) "Fair consideration" is given for property or an obligation when:
  - (a) In exchange for such property or obligation in good faith and as a fair equivalent therefor, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
  - (b) Such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.
- (7) "Foreign country" means any other jurisdiction not in any state.
- (8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
- (9) "Guaranty association" means the Colorado insurance guaranty association created in part 5 of article 4 of this title, the life and health insurance protection association created in article 20 of this title, and any other similar entity now or hereafter created by this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entity now in existence in, or hereafter created by, any other state.
- (10) "Insolvency" or "insolvent" means:
  - (a) For an insurer issuing only assessable fire insurance policies:
  - (I) The inability to pay any obligation within thirty days after the obligation becomes payable; or



(II) If an assessment is made within thirty days after the date the obligation becomes payable, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss.

(b) For any other insurer, that it is unable to pay its obligations when they are due, or that it is deemed insolvent pursuant to section 10-3-212.

(11) "Insurance department" means the commissioner or other government official or agency of a state other than Colorado exercising powers and duties substantially equivalent to those of the commissioner or the division.

(12) "Insurer" means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, the commissioner or any insurance department.

(13) "Preferred claim" means any claim with respect to which the terms of this part 5 accord priority of payment from the general assets of the insurer.

(14) "Receiver" means a receiver, liquidator, rehabilitator, or conservator.

(15) "Reciprocal state" means any state other than this state in which, in substance and effect, sections 10-3-517 (1), 10-3-551, 10-3-552, 10-3-554, 10-3-555, and 10-3-556 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(17) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(18) "State" means any state, district, or territory of the United States and the Panama canal zone.

(19) "Transfer" includes the sale and any other or different mode, direct or indirect, of disposing of or parting with property or any interest therein, or with the possession thereof, or of fixing a lien upon property or upon any interest therein, absolutely or conditionally, voluntarily, either by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

**Source:** L. 92: Entire part R&RE, p. 1429, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-502 as it existed prior to 1992.

**Cross references:** For insurance definitions generally, see § 10-1-102.

#### ANNOTATION

**In order for a state to be reciprocal to Colorado**, subsection (15) requires only that the reciprocal state have "in substance and effect" provisions similar to those specified in that subsection. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**Although the wording in the Arizona statutes and Colorado statutes is not identical**, it is substantially similar and meets the definition of "reciprocal states" and, therefore, the Ari-

zona order must be afforded full faith and credit and the receiver is entitled to apply for an injunction pursuant to § 10-3-505. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**The definition of "assets" would include debtors' interest in property, pursuant to the deed of trust** since such a finding is consistent with the purposes of this act. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**10-3-503. Persons covered.** (1) The proceedings authorized by this part 5 may be applied to:

(a) All insurers who are doing, or have done, an insurance business in this state and against whom claims arising from that business may exist now or in the future;

- (b) All insurers who purport to do an insurance business in this state;
- (c) All insurers who have insureds resident in this state;
- (d) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;
- (e) All fraternal benefit societies and beneficial societies subject to article 14 of this title;
- (f) All title insurance companies subject to the "Title Insurance Code of Colorado", article 11 of this title;
- (g) All health care plans subject to the "Prepaid Dental Care Plan Law of Colorado", article 16.5 of this title, or the "Colorado Health Maintenance Organization Act", article 17 of this title; and
- (h) All employers' self-insurance pools created pursuant to section 8-44-205, C.R.S.

**Source:** L. 92: Entire part R&RE, p. 1431, § 14, effective July 1.

**Editor's note:** (1) The "Prepaid Dental Care Plan Law of Colorado", referred to in subsection (1)(g), was repealed, effective July 1, 1992. Provisions relating to prepaid dental care plans can now be found in part 5 of article 16 of this title.

(2) The "Colorado Health Maintenance Organization Act", referred to in subsection (1)(g) was repealed, effective July 1, 1992. Provisions relating to HMOs can now be found in parts 1 and 4 of article 16 of this title.

**10-3-504. Jurisdiction - venue.** (1) No delinquency proceeding shall be commenced under this part 5 by anyone other than the commissioner, and no court shall have jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.

(2) The district court in and for the city and county of Denver shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this part 5.

(3) In addition to other grounds for jurisdiction provided by law, the district court in and for the city and county of Denver has jurisdiction over a person served pursuant to the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state if:

(a) The person served is an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted in any action resulting from or incident to such a relationship with the insurer; or

(b) The person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or

(c) The person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer; or

(d) The person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning such assets; or

(e) The person served is obligated to the insurer in any way whatsoever, in any action on or incident to the obligation.

(4) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(5) All actions authorized pursuant to this part 5 shall be brought in the district court in and for the city and county of Denver.



**Source:** L. 92: Entire part R&RE, p. 1432, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-503 as it existed prior to 1992.

#### ANNOTATION

**Trial court properly denied motion for change of venue** since subsection (5) specifically requires that all actions authorized under this act be brought in Denver district court;

subsection (5), not C.R.C.P. 98(b)(2), governs the action. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**10-3-504.5. Application for receivership.** No application or proceeding for a receivership of any domestic insurance company shall be made in any court in this state by any person, nor shall any court receive or entertain any such application or proceeding, unless and until such application is approved by the commissioner, and then such application shall be made only by the attorney general of the state. The commissioner shall not give said approval until after the examination and hearing by the commissioner and the attorney general, which shall not be made public, at which the company affected shall be given ample opportunity to submit the facts as to its condition. Any person who violates any provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than one year, or by both such fine and imprisonment.

**Source:** L. 92: Entire part R&RE, p. 1433, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-503 as it existed prior to 1992.

**10-3-505. Injunctions - orders.** (1) Any receiver appointed in a proceeding under this part 5 may at any time apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (a) The transaction of further business;
  - (b) The transfer of property;
  - (c) Interference with the receiver or with a proceeding under this part 5;
  - (d) Waste of the insurer's assets;
  - (e) Dissipation or transfer, or both, of bank accounts;
  - (f) The institution or further prosecution of any actions or proceedings;
  - (g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;
  - (h) The levying of execution against the insurer, its assets, or its policyholders;
  - (i) The making of any sale or deed for nonpayment of taxes or assessments that would tend to lessen the value of the assets of the insurer;
  - (j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
  - (k) Any other threatened or contemplated action that might tend to lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under this part 5.
- (2) The receiver may, if necessary, apply to any court outside of the state for the relief described in subsection (1) of this section.

**Source:** L. 92: Entire part R&RE, p. 1434, § 14, effective July 1.

## ANNOTATION

Since the grant or denial of a preliminary injunction is a decision that lies within the sound discretion of the trial court, an appellate court reviewing the issuance of the injunction will usually do so with great deference to the conclusions reached by the lower court and will substitute its judgment for that of the trial court only if the trial court's ruling was manifestly unreasonable, arbitrary, or unfair. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

Trial court did not exceed its authority in granting the receiver's motion for preliminary injunction since subsection (1) grants the court broad authority to enjoin numerous acts, including interference with the receiver and the institution or further prosecution of any actions or proceedings. *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**10-3-506. Cooperation of officers, owners, and employees.** (1) Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other person with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this part 5 or any investigation preliminary to the proceeding. The term "person" as used in this section shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "To cooperate" shall include, but shall not be limited to, the following:

(a) To reply promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in the person's possession, custody, or control.

(2) No person shall obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

(4) Any person included within subsection (1) of this section who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any valid order of the commissioner issued pursuant to this part 5 may:

(a) Be subject to a fine not to exceed ten thousand dollars or to imprisonment for a term of not more than one year, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars or to the revocation or suspension of any insurance licenses issued by the commissioner, or to both such civil penalty and such revocation or suspension.

**Source:** L. 92: Entire part R&RE, p. 1434, § 14, effective July 1.

## ANNOTATION

*Applied* in *Insurance Affiliates, Inc. v. O'Connor*, 522 F. Supp. 703 (D. Colo. 1981).

**10-3-507. Continuation of delinquency proceedings.** Every proceeding commenced prior to July 1, 1992, shall be deemed to have been commenced under this part 5 for the purpose of conducting the proceeding thereafter; except that, in the discretion of the commissioner, the proceeding may be continued, in whole or in part, as it would have been continued had this part 5 not been enacted.

**Source:** L. 92: Entire part R&RE, p. 1435, § 14, effective July 1.



## ANNOTATION

**Trial court did not err** in determining that the receiver must consider and pay the claim from an out of state insurance guarantee association. Generally the association would have subrogation rights against a receiver of an insolvent insurer and the receiver would be obligated to reimburse the association. The association's set-

tlement of the claimants' claims and payments to them entitled the association to subrogation rights of those claimants. *Stephens v. Colaiana*, 942 P.2d 1374 (Colo. App. 1997).

**Applied** in *H.M.O. Sys. v. Choicecare Health Servs., Inc.*, 665 P.2d 635 (Colo. App. 1983).

**10-3-508. Condition on release from delinquency proceedings.** (1) No insurer subject to any delinquency proceedings, whether formal, informal, administrative, or judicial, shall:

(a) Be released from such proceeding, unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding;

(b) Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(c) Be returned to the control of its shareholders or private management; or

(d) Have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the insurer shall have been approved by the guaranty association.

**Source:** L. 92: Entire part R&RE, p. 1435, § 14, effective July 1.

**10-3-509. Court's seizure order.** (1) The commissioner may file in the district court in and for the city and county of Denver a petition alleging, with respect to a domestic insurer:

(a) That there exists any fact or circumstance that would justify a court order for a formal delinquency proceeding against an insurer under this part 5;

(b) That the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) That an order, the contents of which shall be furnished to the court by the commissioner, is necessary to protect the interests of policyholders, creditors, or the public.

(2) Upon a filing pursuant to subsection (1) of this section, the court may issue forthwith, ex parte, and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by the insurer for transaction of its business, and shall until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this part 5 after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this part 5 shall ipso facto vacate the seizure order. For purposes of this section, a "formal proceeding" means any liquidation or rehabilitation proceeding.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of such order for a hearing and review of the order. The court shall hold such a hearing and review not more than fifteen days after the request. A hearing under this subsection (5) may be held privately in chambers and it shall be so held if the

insurer proceeded against so requests. The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the order and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(6) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given to such person. An order that notice be given shall not stay the effect of any order previously issued by the court.

**Source:** L. 92: Entire part R&RE, p. 1436, § 14, effective July 1.

**10-3-510. Confidentiality of hearings.** In all proceedings and judicial reviews thereof under section 10-3-509, all records of the insurer, other documents, and all division files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the court, after hearing arguments from the parties in chambers, shall order otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the court shall be held in a confidential file.

**Source:** L. 92: Entire part R&RE, p. 1437, § 14, effective July 1.

**10-3-511. Grounds for rehabilitation.** (1) The commissioner may apply by petition to the district court in and for the city and county of Denver for an order authorizing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders or creditors or to the public.

(b) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(c) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether such person is an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(d) Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy.

(e) Any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere, and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all of such person's influence on management.

(f) After demand by the commissioner under section 10-1-204 or under this part 5, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer insofar as they pertain to the insurer.

(g) Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to part 7 or 8 of this article, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.



(h) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and such appointment has been made or is imminent, and such appointment might oust the courts of this state of jurisdiction or might prejudice the orderly conduct of delinquency proceedings pursuant to this part 5.

(i) The insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner.

(j) The insurer has failed to pay within thirty days after the due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which such judgment was entered had jurisdiction over such subject matter; except that such nonpayment shall not be a ground for rehabilitation until thirty days after the termination of any good-faith effort by the insurer to contest the obligation, whether such effort is made before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(k) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation for such failure immediately.

(l) The board of directors of, or the holders of a majority of the shares entitled to vote in, or a majority of those individuals entitled to the control of, those entities specified in section 10-3-503 request or consent to rehabilitation under this part 5.

(m) The insurer is impaired as defined in section 10-3-212.

**Source: L. 92:** Entire part R&RE, p. 1438, § 14, effective July 1.

**10-3-512. Rehabilitation orders.** (1) An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner as the rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer such assets under the general supervision of the court. The filing or recording of the order with the clerk of the district court in and for the city and county of Denver or with the recorder of deeds of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with such recorder of deeds. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(2) Any order issued under this section shall require accounting to the court by the rehabilitator. Accounting shall be at such intervals as the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under section 10-3-513 (4) will be prepared by the rehabilitator and the timetable for doing so.

(3) Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contract of the insurer, nor shall it be a basis for retroactive revocation or retroactive cancellation of any contract of the insurer, unless such revocation or cancellation is done by the rehabilitator pursuant to section 10-3-513.

**Source: L. 92:** Entire part R&RE, p. 1439, § 14, effective July 1.

**10-3-513. Powers and duties of rehabilitator.** (1) The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. The commis-

sioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary. Such committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or by the court in rehabilitation proceedings conducted under this part 5.

(2) The rehabilitator may take such action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer, and shall have all the powers of the insurer's directors, officers, and managers, whose authority shall be suspended except insofar as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct, manage, hire, and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections 10-3-525 and 10-3-526 to avoid fraudulent transfers.

**Source: L. 92:** Entire part R&RE, p. 1440, § 14, effective July 1.

**10-3-514. Actions by and against rehabilitator.** (1) Any court in this state before which any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for a minimum of ninety days and for such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as the rehabilitator deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced within a period of not less than sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law had not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.



**Source:** L. 92: Entire part R&RE, p. 1441, § 14, effective July 1.

**10-3-514.5. Immunity and indemnification of receiver and employees - applicability.** (1) For the purposes of this section, the persons entitled to protection are:

(a) All receivers responsible for the conduct of a delinquency proceeding under this part 5 including present and former receivers; and

(b) Their employees, meaning all present and former special deputies and assistant special deputies appointed by the commissioner and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this part 5. Attorneys, accountants, auditors, and other professional persons or firms who are retained by the receiver as independent contractors and their employees shall not be considered employees of the receiver for purposes of this section.

(2) The receiver and his employees shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of their duties or employment; except that nothing in this subsection (2) shall be construed to hold the receiver or any employee immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver or of any employee.

(3) If any legal action is commenced against the receiver or any employee, whether against him personally or in his official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any employee arising out of or by reason of their duties or employment, the receiver and any employee shall be indemnified from the assets of the insurer for all expenses, attorney fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of such legal action unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or employee giving rise to the claim did not arise out of or by reason of his duties or employment, or was caused by intentional or willful and wanton misconduct.

(4) Attorney fees and any and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the receiver or employee to repay the attorney fees and expenses if it shall ultimately be determined upon a final adjudication on the merits that the receiver or employee is not entitled to immunity or indemnity under this section.

(5) Any indemnification for expense payments, judgments, settlements, decrees, attorney fees, surety bond premiums, or other amounts paid from the insurer's assets pursuant to this section shall be an administrative expense of the insurer.

(6) In the event of any actual or threatened litigation against a receiver or any employee for which immunity or indemnity may be available under this section, a reasonable amount of funds which in the judgment of the commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until such time as all applicable statutes of limitation have run and all actual or threatened actions against the receiver or any employee have been completely and finally resolved and all obligations of the insurer and the commissioner under this section have been satisfied.

(7) In lieu of segregation and reservation of funds, the commissioner may, in the commissioner's discretion, obtain a surety bond or make other arrangements which will enable the commissioner to fully secure the payment of all obligations under this section.

(8) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the commissioner determines:

(a) That the claim did not arise out of or by reason of the employee's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the employee.

(9) In any legal action in which the receiver is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the receiver shall be subject to the approval of the court before which the delinquency proceeding is pending. The court shall not approve that portion of the settlement if it determines:

(a) That the claim did not arise out of or by reason of the receiver's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the receiver.

(10) Nothing contained or implied in this section shall operate, or be construed or applied, to deprive the receiver or any employee of any immunity, indemnity, benefits of law, rights, or any defense otherwise available.

(11) (a) Subsection (2) of this section shall apply to any suit based in whole or in part on any alleged act, error, or omission occurring on or after July 1, 1992.

(b) No legal action shall lie against the receiver or any employee based in whole or in part on any alleged act, error, or omission which took place prior to July 1, 1992, unless suit is filed and valid service of process is obtained within twelve months after July 1, 1992.

(c) Subsections (3) to (9) of this section shall apply to any suit which is pending on or filed after July 1, 1992, without regard to when the alleged act, error, or omission took place.

**Source: L. 92:** Entire part R&RE, p. 1442, § 14, effective July 1.

**10-3-515. Termination of rehabilitation.** (1) Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court in and for the city and county of Denver for an order of liquidation. A petition under this subsection (1) shall have the same effect as a petition under section 10-3-516. The court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

(2) The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of an insurer's policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under section 10-3-513 (5), the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

(3) The rehabilitator may at any time petition the district court in and for the city and county of Denver for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 10-3-511 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The court may also make such a finding and issue such an order at any time upon its own motion.

**Source: L. 92:** Entire part R&RE, p. 1445, § 14, effective July 1.

**10-3-516. Grounds for liquidation.** (1) The commissioner may petition the district court in and for the city and county of Denver for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

(a) Of any ground for an order of rehabilitation as specified in section 10-3-511, whether or not there has been a prior order directing the rehabilitation of the insurer;

(b) That the insurer is insolvent; or



(c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

**Source:** L. 92: Entire part R&RE, p. 1446, § 14, effective July 1.

**10-3-517. Liquidation orders.** (1) An order to liquidate the business of a domestic insurer shall appoint the commissioner as liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court in and for the city and county of Denver and the recorder of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

(2) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation except as provided in sections 10-3-518 and 10-3-536.

(3) An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer; except that the assets and the business in the United States shall be the only assets and business included therein.

(4) At the time of petitioning for an order of liquidation or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and holding such hearing as it deems proper, the court may make the declaration.

(5) Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.

(6) Within five days after July 1, 1992, or, if later, within five days after the initiation of an appeal of an order of liquidation, unless such order has been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of the appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the pendency of the appeal, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and, if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(7) The appeal pendency plan effected pursuant to subsection (6) of this section shall not supersede or affect the obligations of any insurance guaranty association.

(8) Any appeal pendency plan effected pursuant to subsection (6) of this section shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a

pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith, relating to obligations of the company have been repaid in full together with interest at the judgment rate of interest, or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

**Source: L. 92:** Entire part R&RE, p. 1446, § 14, effective July 1.

**10-3-518. Continuation of coverage.** (1) All policies, including bonds and other noncancellable business but not including life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

- (a) A period of thirty days from the date of entry of the liquidation order;
- (b) The expiration of the policy coverage;
- (c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;
- (d) The effective date of a transfer of the policy obligation by the liquidator pursuant to section 10-3-520 (1) (i); or

(e) The date proposed by the liquidator and approved by the court to cancel coverage.

(2) An order of liquidation under section 10-3-517 shall terminate coverages at the time specified in subsection (1) of this section for purposes of any other statute.

(3) Policies of life or health insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or any period or coverage of such policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2) of this section.

**Source: L. 92:** Entire part R&RE, p. 1448, § 14, effective July 1.

**10-3-519. Dissolution of insurer.** The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

**Source: L. 92:** Entire part R&RE, p. 1449, § 14, effective July 1.

**10-3-520. Powers of liquidator.** (1) The liquidator shall have the power:

(a) To appoint a special deputy or deputies to act for the liquidator under this part 5, and to determine the reasonable compensation of such special deputy. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator may deem necessary to assist in the liquidation;

(c) To appoint, subject to the approval of the court, an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary. Such committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or by the court in liquidation proceedings conducted under this part 5.



(d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants subject to the approval of the court;

(e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the division of insurance. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available moneys of the insurer.

(f) To hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to the person's testimony after it has been correctly reduced to writing; and, in connection therewith, to require the production of any books, papers, records, or other documents which the liquidator deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(h) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(I) To institute timely action in other jurisdictions, in order to forestall garnishment or attachment proceedings against such debts;

(II) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best; and

(III) To pursue any creditors' remedies available to enforce the liquidator's claims;

(i) To conduct public and private sales of the property of the insurer;

(j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 10-3-541;

(k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to such transaction for the purpose of facilitating the liquidation. Any funds so borrowed may be repaid as an administrative expense and may be given priority over any other claims in class 1 under the priority of distribution pursuant to section 10-3-541.

(m) To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party;

(n) To continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims deemed unprofitable to pursue further. If the insurer is dissolved under section 10-3-519, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to be substituted for the insurer as plaintiff.

(o) To prosecute any action which may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(p) To remove any records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.

(q) To deposit in one or more banks in this state such sums as are required to meet current administration expenses and dividend distributions;

(r) To invest all sums not currently needed, unless the court orders otherwise;

(s) To file any necessary documents for record in the office of any recorder of deeds or record office where property of the insurer is located, in this state or elsewhere;

(t) To assert all defenses available to the insurer as against third persons, which defenses shall include but not be limited to statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.

(u) To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be conferred by law whether or not such power is conferred by sections 10-3-525 to 10-3-527;

(v) To intervene in any proceeding, wherever instituted, which could result in the appointment of a receiver or trustee, and to act as the receiver or trustee whenever such appointment is offered;

(w) To enter into agreements with any receiver, commissioner, or insurance department of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(x) To exercise, in a manner consistent with the provisions of this part 5, all powers now held or hereafter conferred upon receivers by the laws of this state.

(2) (a) If a company placed in liquidation issued liability policies on a claims-made basis, and if such policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims subject to the conditions stated in this subsection (2). The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months after the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon the liquidator, nor shall it exclude in any manner the liquidator's right to do such other acts not specifically enumerated or otherwise provided for in this section as may be necessary or appropriate for the accomplishment of, or in aid of the purpose of, liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

**Source:** L. 92: Entire part R&RE, p. 1449, § 14, effective July 1.

**10-3-521. Notice to creditors and others.** (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) By first class mail and either by telegram or telephone to the insurance department of each jurisdiction in which the insurer is doing business;

(b) By first class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) By first class mail to all insurance agents of the insurer;



(d) By first class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders at their last known address as indicated by the records of the insurer; and

(e) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

(2) Notice to potential claimants under subsection (1) of this section shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 10-3-535, on or before a date the liquidator shall specify in the notice. Although an earlier date may be set by the liquidator, the last day to file claims shall be no later than eighteen months after the order of liquidation. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.

(3) Notice under subsection (1) of this section to agents of the insurer and to potential claimants who are policyholders shall include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(4) The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of such policyholders and their policy coverages as may be within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to such policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.

(5) If notice is given in accordance with this section, the distribution of assets of the insurer under this part 5 shall be conclusive with respect to all claimants regardless of whether or not they received notice.

**Source: L. 92:** Entire part R&RE, p. 1453, § 14, effective July 1.

**10-3-522. Duties of agents.** (1) Every person who receives notice in the form prescribed in section 10-3-521 that an insurer which the person represents as an agent is the subject of a liquidation order shall, within thirty days of such notice, provide to the liquidator, in addition to the information such person may be required to provide pursuant to section 10-3-506, all information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to the general agent, including the name and address of such subagent. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(2) Any agent failing to provide information to the liquidator as required in subsection (1) of this section may be subject to a penalty of not more than one thousand dollars and, in addition, any licenses of any such agent may be suspended. Such penalty or suspension, or both, shall be imposed only after a hearing held by the commissioner.

**Source: L. 92:** Entire part R&RE, p. 1454, § 14, effective July 1.

**10-3-523. Actions by and against liquidator.** (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included

in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend any action in which the liquidator intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within two years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act required of or permitted to the insurer, if the liquidator does so within a period of one hundred eighty days subsequent to the entry of an order for liquidation or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) No statute of limitation or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against the insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

(4) Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if such association is or may become liable to act as a result of the liquidation.

**Source:** L. 92: Entire part R&RE, p. 1455, § 14, effective July 1.

**10-3-524. Collection and listing of assets.** (1) As soon as practicable after the liquidation order but not later than one hundred twenty days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court in and for the city and county of Denver and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

(3) A submission to the court for disbursement of assets in accordance with section 10-3-533 fulfills the requirements of subsection (1) of this section.

**Source:** L. 92: Entire part R&RE, p. 1456, § 14, effective July 1.

**10-3-525. Fraudulent transfers prior to petition.** (1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this part 5 is fraudulent as to then existing and future creditors if made or incurred without fair consideration or if made with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this part 5, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value; except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.



(2) (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under section 10-3-527 (3).

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection (2) shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefore and shall be bound to account to the liquidator.

**Source: L. 92:** Entire part R&RE, p. 1456, § 14, effective July 1.

**10-3-526. Fraudulent transfer after petition.** (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value; or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefore, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value; or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefore, for which amount the transferee shall have a lien on the property so transferred.

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon the insurer's order, with the same effect as if the petition were not pending.

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith.

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefore and shall be bound to account to the liquidator.

(4) Nothing in this part 5 shall impair the negotiability of currency or negotiable instruments.

**Source: L. 92:** Entire part R&RE, p. 1458, § 14, effective July 1.

**10-3-527. Voidable preferences and liens.** (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this part 5, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(I) The insurer was insolvent at the time of the transfer; or

(II) The transfer was made within four months before the filing of the petition; or

(III) The creditor receiving it or to be benefited thereby or the agent of any such creditor acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(IV) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not such person held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, such purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by the purchaser. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(2) (a) (I) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(II) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(b) (I) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(II) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(c) The provisions of this subsection (2) shall apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.



(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under paragraph (b) of subsection (1) of this section has been dissolved by the furnishing of a bond or other obligation and the surety which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part 5 which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator; except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court in and for the city and county of Denver shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within such reasonable times as the court shall fix.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or where the property is retained under subsection (7) of this section to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from such insurer.

(10) If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for liquidation under this part 5, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefits of the estate; except that, where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or

the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provision of subparagraph (IV) of paragraph (b) of subsection (1) of this section.

(11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when any such person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of a successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection (11) shall prejudice any other claim by the liquidator against any person.

**Source:** L. 92: Entire part R&RE, p. 1459, § 74, effective July 1.

**10-3-528. Claims of holders of void or voidable rights.** (1) No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part 5 shall be allowed unless such creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment; except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) of this section by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused last filing under section 10-3-534 if filed within thirty days from the date of the avoidance, or within the further time allowed by the court pursuant to subsection (1) of this section.

**Source:** L. 92: Entire part R&RE, p. 1463, § 14, effective July 1.

**10-3-529. Setoffs - effective date - applicability.** (1) Notwithstanding any other provision of this title, mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this part 5, shall be set off, and the balance only shall be allowed or paid, except as provided in subsections (2) and (4) of this section and section 10-3-532.

(2) No setoff shall be allowed in favor of any person where:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for receivership entitle the person to share as a claimant in the assets of the insurer; or

(b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; or

(c) The obligation of the insurer is owed to an affiliate of such person, or any other entity or association other than the person; or

(d) The obligation of the person is owed to an affiliate of the insurer or to any other entity or association other than the insurer; or

(e) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(f) The obligations between the person and the insurer arise from business in which either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations; except that,



with regard to such business, the commissioner has discretion to allow certain setoffs if the commissioner deems them appropriate.

(3) (Deleted by amendment, L. 2001, p. 229, § 1, effective July 1, 2001.)

(4) The commissioner may promulgate rules and regulations to implement this section including the establishment of reasonable accounting requirements.

(5) Notwithstanding any other provision of this section to the contrary, a setoff of sums due on obligations in the nature of those set forth in paragraph (f) of subsection (2) of this section shall be allowed for those sums accruing from business written where the contracts were entered into, renewed, or extended with the express written approval of the insurance department of the state of domicile of the now insolvent insurer and, in the judgment of such insurance department, it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of the said insurance department's regulatory responsibilities.

(6) This section shall be effective January 1, 1993, and shall apply to all contracts entered into, renewed, extended, or amended on or after said date and to debts or credits arising from any business written or transactions occurring after January 1, 1993, pursuant to any contract including those in existence prior to January 1, 1993, and shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer. For purposes of this section, any change in the terms of, or consideration for, any such contract shall be deemed an amendment.

**Source:** L. 92: Entire part R&RE, p. 1463, § 14, effective July 1. L. 2001: (1), (2)(a), (2)(f), and (3) amended, p. 229, § 1, effective July 1.

**10-3-530. Assessments.** (1) As soon as practicable but not more than two years after the date of an order of liquidation under section 10-3-517 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- (a) The reasonable value of the assets of the insurer;
- (b) The insurer's probable total liabilities;
- (c) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (d) A recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided pursuant to subsection (1) of this section and including any supplements and amendments thereto, the district court in and for the city and county of Denver may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount by which the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2) of this section, the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment therefor.

(4) The liquidator shall give notice of the order to show cause by publication and by first class mail to each member liable under such order mailed to the member's last known address as it appears on the insurer's records, at least twenty days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3) of this section, the court shall make an order adjudging the member liable for the amount of the assessment together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If, on or before such return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. In the event that the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) of this section by any lawful means.

**Source: L. 92:** Entire part R&RE, p. 1465, § 14, effective July 1.

**10-3-531. Reinsurers' liability.** (1) Except as otherwise provided in subsection (2) of this section, the amount recoverable by the liquidator from reinsurers shall be payable under a contract or contracts reinsured by the reinsurer on the basis of reported claims allowed by the liquidation court without diminution as a result of the insolvency of the ceding insurer. Such payment shall be made directly to the ceding insurer or to its domiciliary liquidator unless the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer.

(2) Notwithstanding subsection (1) of this section, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, whether pursuant to section 10-20-108 (13) (h) or otherwise, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer shall discharge the reinsurer of all further liability to any other party for such claim payment.

**Source: L. 92:** Entire part R&RE, p. 1466, § 14, effective July 1. **L. 2001:** Entire section amended, p. 230, § 2, effective July 1.

**10-3-532. Recovery of premiums owed.** (1) (a) An agent, broker, premium finance company, or any other person other than the insured that is responsible for the payment of a premium shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

(b) An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend, revoke, or refuse to renew the licenses of such offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each and every act in violation of this section by said party or parties.

(3) Before the commissioner takes any action set forth in subsection (2) of this section, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing the commissioner, if the commissioner finds the accused committed any such violation, shall impose such penalties under subsection (2) of this section as are deemed advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved may appeal from said action to the district court in and for the city and county of Denver.



**Source: L. 92:** Entire part R&RE, p. 1466, § 14, effective July 1.

**10-3-533. Domiciliary liquidator's proposal to distribute assets.** (1) Within one hundred twenty days after a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets, from time to time and as such assets become available, to a guaranty association or foreign guaranty association having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for such determination.

(2) The proposal referenced in subsection (1) of this section shall at least include provisions for:

(a) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and claims falling within the priorities established in section 10-3-541 (1) and (2);

(b) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available;

(c) Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;

(d) The securing, by the liquidator, from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to the liquidator such assets together with income earned on assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section 10-3-541 in accordance with such priorities; and in such case, no bond shall be required of any such association; and

(e) A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator, and shall further provide that, if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the statutes creating such associations.

(5) Notice of the application referenced in subsection (1) of this section shall be given to the association in, and to the insurance departments of, each of the states having jurisdiction over any insurer affected by the liquidator's proposal. Any such notice shall be deemed to have been given when deposited in the United States certified mail, first class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court if such notice has been given and if the liquidator's proposal complies with the requirements of paragraphs (a) and (b) of subsection (2) of this section.

**Source: L. 92:** Entire part R&RE, p. 1467, § 14, effective July 1.

**10-3-533.5. Sale of insolvent insurer as a going concern.** (1) (a) The domiciliary receiver may apply to the court for permission to sell an insolvent domestic insurer as a going concern. If the court determines that the sale of the insurer as a going concern is in the best interest of the estate and that the sale will not diminish the value of the claims of shareholders and creditors, the court shall order that the insurer be discharged from all of its liabilities, that the outstanding shares of the insurer be cancelled, that for no additional

consideration new shares of the insurer be issued in the name of the receiver, that the receiver be vested with title to the new shares, which shares shall be deemed validly issued, fully paid, and nonassessable pursuant to applicable law, and that the receiver be authorized to sell the shares, together with such state or federal income or other tax credits or deductions of the insurer as the receiver determines to be in the best interest of the estate. Upon confirmation of the sale by the court, the purchasers of the shares shall be vested with title to those shares, including any such tax credits of the insurer, free and clear of all claims and defenses. The proceeds from the sale of the shares shall become a part of the general assets of the estate in liquidation.

(b) A sale under this section does not affect the rights and liabilities of the estate of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in the estate as fixed under section 10-3-541. No person is entitled to any priority or preference rights in the proceeds of the sale except as fixed under said section 10-3-541.

(c) As used in this section, "shares" has the same meaning as set forth in section 7-101-401 (31), C.R.S., and includes any secured party or other person or holder who has or claims to have any interest of any kind in any shares of the insurer.

(2) The enumeration of the powers and authority of the domiciliary receiver in this section shall not be construed as a limitation upon the receiver, nor shall it exclude in any manner the right to do such other acts not specifically enumerated in this section or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(3) Nothing in this section shall be deemed a waiver of capitalization, surplus requirements, or any other condition of licensure imposed by this title for the issuance of a certificate of authority to do insurance business or for the change in control of a foreign or domestic insurer.

(4) This section shall be liberally construed to accomplish its purpose to provide a more expeditious and effective procedure for marshaling the assets of the estate in order to realize the maximum amount possible from the sale of those assets and ensure that the purchasers receive clear and marketable titles.

**Source:** L. 92: Entire part R&RE, p. 1469, § 14, effective July 1. L. 93: (1)(c) amended, p. 859, § 21, effective July 1, 1994. L. 2005: (1)(c) amended, p. 762, § 13, effective June 1.

**10-3-534. Filing of claims.** (1) Proof of all claims shall be filed with the liquidator in the form required by section 10-3-535 on or before the last day for filing specified in the notice required under section 10-3-521; except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant's filing were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) A transfer to a creditor was avoided under sections 10-3-525 to 10-3-527, or was voluntarily surrendered under section 10-3-528, and the filing satisfies the conditions set forth in section 10-3-528; or

(b) The valuation, under section 10-3-540, of security held by a secured creditor shows a deficiency which is filed within thirty days after the valuation.

(3) The liquidator shall permit late-filed claims to share in distributions, whether past or future, as if they were not late, if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.

**Source:** L. 92: Entire part R&RE, p. 1470, § 14, effective July 1.



**10-3-535. Proof of claim.** (1) Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

- (a) The particulars of the claim, including the consideration given for it;
- (b) The identity and amount of the security on the claim;
- (c) The payments made on the debt, if any;
- (d) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
- (e) Any right of priority of payment or other specific right asserted by the claimant;
- (f) A copy of the written instrument which is the foundation of the claim; and
- (g) The name and address of the claimant and of the attorney, if any, who represents the claimant.

(2) No claim needs to be considered or allowed if it does not contain all the information specified in subsection (1) of this section which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(3) The liquidator may, at any time, request the claimant to present information or evidence supplementary to that required under subsection (1) of this section and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion, needs to be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within the four-month period immediately preceding the filing of the petition needs be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association shall be in such form and shall contain such substantiation as may be agreed to by the association and the liquidator.

**Source: L. 92:** Entire part R&RE, p. 1471, § 14, effective July 1.

**10-3-536. Special claims.** (1) The claim of a third party which is contingent only on such party's first obtaining a judgment against the insured shall be considered and allowed as though there were no such contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with section 10-3-534; and such claim may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time shall be treated in the same manner as are absolute claims; except that such claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under section 10-3-512 or 10-3-517.

**Source: L. 92:** Entire part R&RE, p. 1472, § 14, effective July 1.

**10-3-537. Special provisions for third-party claims.** (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 10-3-521, whichever is later, the insured is an unexcused late filer.

(3) The liquidator shall make recommendations to the court under section 10-3-541 for the allowance of an insured's claim under subsection (2) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim pending the outcome of litigation and negotiation with the insured. When appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the said recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in any recommendation as in its initial determination. The court may amend its allowance as it finds appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection (3) shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection (3) of this section. If any insured's claim is subsequently reduced under subsection (3) of this section, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection (4).

(5) No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

**Source: L. 92:** Entire part R&RE, p. 1472, § 14, effective July 1.

**10-3-538. Disputed claims.** (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days after the mailing of the notice, the claimant may file objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than ten days nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee, who shall submit findings of fact along with a recommendation.

**Source: L. 92:** Entire part R&RE, p. 1473, § 14, effective July 1.

**10-3-539. Claims of surety.** Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, such other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that the other person discharges the undertaking; except that, in the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held



by the creditor in trust for such other person. The term "other person", as used in this section, does not apply to a guaranty association or foreign guaranty association.

**Source: L. 92:** Entire part R&RE, p. 1474, § 14, effective July 1.

**10-3-540. Secured creditors' claims.** (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(a) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

(b) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

**Source: L. 92:** Entire part R&RE, p. 1474, § 14, effective July 1.

**10-3-541. Priority of distribution - definitions.** (1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full, or adequate funds shall be retained for such payment, before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) **Class 1.** The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(I) The actual and necessary costs of preserving or recovering the assets of the insurer;

(II) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(III) Any necessary filing fees;

(IV) The fees and mileage payable to witnesses;

(V) Authorized reasonable attorney fees and fees for other professional services rendered in the rehabilitation and liquidation; and

(VI) The administrative expenses of guaranty associations.

(b) **Class 2.** All claims under policies including such claims of the federal or any state or local government including unearned premium claims, third-party claims, and all claims of a guaranty association or foreign guaranty association. That portion of any loss for which indemnification is provided by other benefits or advantages recovered by the claimant, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities, shall not be included in this class. No payment by an employer to the employer's employee shall be treated as a gratuity. All claims under life insurance and annuities policies and deposits, whether for death proceeds, annuity proceeds, or values, shall be treated as class 2 claims. For the purpose of this paragraph (b), policies shall include those insurance company products that are authorized under the laws of this state as such laws existed on the date of the issuance of such policies or on the date of the entry of an order of liquidation. Notwithstanding the provisions of this paragraph (b), class 2 claims shall not include:

(I) Claims under annuity and deposit contracts issued on or before August 15, 2000, however labeled, including labels such as annuity, deposit, financial guarantee, funding agreement, or guaranteed investment contract, unless the contract is:

(A) Issued to, or owned by, an individual or is otherwise an annuity issued in connection with and for the purpose of funding structured settlements of liability; or

(B) Issued to, for the benefit of, or in connection with, a specific employee benefit plan or governmental lottery;

(II) Claims where the risk is not borne by the insurer, such as the uninsured portion of:

(A) A minimum premium group insurance plan;  
(B) A stop-loss group insurance plan; or  
(C) An administrative-services only contract and the related uninsured plan liabilities;  
(III) Claims under an unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; and

(IV) Claims for benefits which are exclusively payable or determined by a separate account required by the terms of such contract to be maintained by the insurer or a separate entity.

(c) **Class 3.** Claims of the federal government, except those described in paragraph (b) of this subsection (1).

(d) **Class 4.** Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within the one-year period immediately preceding the filing of the petition for liquidation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(e) **Class 5.** Claims of any state or local government except those under paragraph (b) of this subsection (1). Claims in this paragraph (e), including those of any governmental body for a penalty or forfeiture, shall be allowed only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose and for the reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to class 7.

(f) **Class 6.** Claims filed late and any other claims other than claims described in paragraph (h) of this subsection (1).

(g) **Class 7.** Surplus or contribution notes or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(h) **Class 8.** Claims of shareholders or other owners in their capacity as shareholders.

(2) (a) (Deleted by amendment, L. 2003, p. 2045, § 2, effective May 22, 2003.)

(b) Every claim under a separate account contract providing, in effect, that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer shall be satisfied out of the assets in the separate account equal to the reserves and other contract liabilities maintained in such account for such contract. To the extent, if any, that the separate account assets are not sufficient to discharge such claims due to fraud, error, or other malfeasance on the part of the insurer or if unsatisfied claims arise from a contractual guarantee made to a contract holder by the insurer's general account, such unsatisfied claims shall be treated as a class 2 claim against the insurer's estate. Any such class 2 claim shall be subject to the applicable exceptions for this class, excluding the exception for separate accounts under subparagraph (IV) of paragraph (b) of subsection (1) of this section.

(3) As used in this section:

(a) "Insurer's estate" means the general assets of such insurer less any assets held in separate accounts that, pursuant to section 10-7-402, are not chargeable with liabilities arising out of any other business of the insurer. To the extent, if any, assets maintained in the separate account are in excess of the amounts needed to satisfy claims under the separate account contracts, the excess shall be treated as part of the insurer's estate.

(b) "Separate account contract" means any life policy or contract, annuity contract, funding agreement, or guaranteed investment contract providing for the allocation of amounts received in connection with such policy, contract, or agreement to a separate account authorized by section 10-7-402.

**Source:** L. 92: (1)(c) amended, p. 1552, § 48, effective May 20; entire part R&RE, p. 1474, § 14, effective July 1. L. 96: Entire section amended, p. 174, § 1, effective April 8. L. 97: (1)(b)(I)(A) amended and (2) added, p. 360, § 1, effective August 6. L. 2000: IP(1)(b) and IP(1)(b)(I) amended, p. 1733, § 6, effective August 15. L. 2003: (2)(a) amended and (3) added, p. 2045, § 2, effective May 22.



**Editor's note:** Although the effective date for the repeal and reenactment of this part 5 was July 1, 1992, the act further amending subsection (1)(c) was effective May 20, 1992.

**10-3-542. Liquidator's recommendations to the court.** (1) The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as deemed necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 10-3-538. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the liquidator's report on claims. Claims allowed in any report not modified by the court within a period of sixty days after submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section 10-3-538. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

**Source:** L. 92: Entire part R&RE, p. 1476, § 14, effective July 1.

**10-3-543. Distribution of assets.** Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

**Source:** L. 92: Entire part R&RE, p. 1477, § 14, effective July 1.

**10-3-544. Unclaimed and withheld funds.** (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid, without interest, except in accordance with section 10-3-541, to the person entitled thereto or such person's legal representative upon proof satisfactory to the state treasurer of the person's right thereto. Any amount on deposit not claimed within six years after the date of discharge of the liquidator shall be deemed to have been abandoned and shall escheat, without formal escheat proceedings, to the state and shall be deposited in the general fund.

(2) All funds withheld under section 10-3-537 and not distributed shall, upon discharge of the liquidator, be deposited with the state treasurer and paid in accordance with section 10-3-541. Any sums remaining which, under section 10-3-541, would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection (1) of this section unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation under section 10-3-546.

**Source:** L. 92: Entire part R&RE, p. 1477, § 14, effective July 1.

**10-3-545. Termination of proceedings.** (1) When all assets justifying the expense of collection and distribution have been collected and distributed under this part 5, the

liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be deemed appropriate.

(2) Any other person may apply to the court at any time for an order under subsection (1) of this section. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney fee.

**Source: L. 92:** Entire part R&RE, p. 1477, § 14, effective July 1.

**10-3-546. Reopening liquidation.** After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court in and for the city and county of Denver to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

**Source: L. 92:** Entire part R&RE, p. 1478, § 14, effective July 1.

**10-3-547. Disposition of records during and after termination of liquidation.** Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.

**Source: L. 92:** Entire part R&RE, p. 1478, § 14, effective July 1.

**10-3-548. External audit of receiver's books.** The district court in and for the city and county of Denver may, as it deems desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this part 5, and a report of each such audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

**Source: L. 92:** Entire part R&RE, p. 1478, § 14, effective July 1.

**10-3-549. Conservation of property of foreign or alien insurers found in this state.** (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court in and for the city and county of Denver by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

- (a) Any of the grounds set forth in section 10-3-511;
- (b) That any of the insurer's property has been sequestered by official action in its domiciliary state or in any other state;
- (c) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
- (d) That its certificate of authority to do business in this state has been revoked or that none was ever issued and that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the said court or with the recorder of deeds of the county in which the principal business of the company is located shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.



(4) The conservator may at any time petition for, and the court may grant, an order under section 10-3-550 to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, for appointment as ancillary receiver under section 10-3-552.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party. If such motion by any person other than the conservator is denied, all costs of such motion shall be assessed against the movant.

**Source: L. 92:** Entire part R&RE, p. 1478, § 14, effective July 1.

**10-3-550. Liquidation of property of foreign or alien insurers found in this state.**

(1) If no domiciliary receiver has been appointed, the commissioner may apply to the district court in and for the city and county of Denver by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the grounds specified in section 10-3-511 or 10-3-516 or any of the grounds specified in section 10-3-549 (1) (b) to (1) (d).

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the said court or with the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with such recorder of deeds.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 10-3-552. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 10-3-552.

(5) On the same grounds as are specified in subsection (1) of this section, the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or over any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when the commissioner has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under such rules governing the liquidation of insurers under this part 5 as are otherwise compatible with the provisions of this section.

**Source: L. 92:** Entire part R&RE, p. 1479, § 14, effective July 1.

**10-3-551. Domiciliary liquidators in other states.** (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested, except as to special deposits and security on secured claims under section 10-3-552 (3), by operation of law with the title to all of the assets, property, contracts, rights of action, and agents' balances and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state, and shall also,

subject to the provisions of section 10-3-552, have the right to recover all other assets of the insurer located in this state.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 10-3-549 or 10-3-550 or for an ancillary receivership under section 10-3-552, or, after approval by the district court in and for the city and county of Denver, may transfer title to the domiciliary liquidator as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. Such claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

**Source:** L. 92: Entire part R&RE, p. 1480, § 14, effective July 1.

**10-3-552. Ancillary formal proceedings.** (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court in and for the city and county of Denver requesting appointment as ancillary receiver in this state:

(a) If the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or

(b) If the protection of creditors or policyholders in this state so requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with a recorder of deeds in this state imparts the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with such recorder of deeds.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as is practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall also promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and such ancillary receiver's deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, rights, duties, and powers corresponding to those provided in subsection (3) of this section for ancillary receivers appointed in this state.

**Source:** L. 92: Entire part R&RE, p. 1481, § 14, effective July 1.

**10-3-553. Ancillary summary proceedings.** The commissioner, in the commissioner's sole discretion, may institute proceedings under sections 10-3-509 and 10-3-510 at the request of the insurance department of the domiciliary state of any foreign or alien insurer having property located in this state.

**Source:** L. 92: Entire part R&RE, p. 1482, § 14, effective July 1.

**10-3-554. Claims of nonresidents against insurers domiciled in this state.** (1) In a liquidation proceeding commenced in this state against an insurer domiciled in this state,



claimants residing in foreign countries or in states that are not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, if a claim filing procedure is established in the ancillary proceeding, or with the domiciliary liquidator. Such claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this part 5, or in ancillary proceedings, if any, in the reciprocal states if a claim filing procedure is established in the ancillary proceeding. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 10-3-555 (2) with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 10-3-541.

**Source:** L. 92: Entire part R&RE, p. 1482, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-505 as it existed prior to 1992.

**10-3-555. Claims of residents against insurers domiciled in reciprocal states.**

(1) Promptly after the appointment of the commissioner as ancillary receiver for an insurer not domiciled in this state, the commissioner shall determine whether there are claimants residing in this state who are not protected by guaranty funds and, if so, whether the protection of such claimants requires the establishing of a claim filing procedure in the ancillary proceeding. If a claim filing procedure is established, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Such claims shall be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state if a claim filing procedure is established in such ancillary proceeding. If a claimant elects to prove such a claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 10-3-534 and 10-3-535. The ancillary receiver shall make a recommendation to the court as under section 10-3-542 and shall also arrange a date for hearing if necessary under section 10-3-538 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least forty days prior to the date set for hearing. If the domiciliary liquidator, within thirty days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of the domiciliary liquidator's intention to contest the claim, the domiciliary liquidator shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

**Source:** L. 92: Entire part R&RE, p. 1483, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-506 as it existed prior to 1992.

**10-3-556. Attachment, garnishment, and levy of execution.** During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution shall be commenced or maintained in this state against the delinquent insurer or its assets.

**Source:** L. 92: Entire part R&RE, p. 1483, § 14, effective July 1.

**Editor's note:** This section is similar to former § 10-3-510 as it existed prior to 1992.

**10-3-557. Interstate priorities.** (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, as well as all claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file the claim as a general creditor. Alternatively, the claim may be discharged by resort to the security in accordance with section 10-3-540, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

**Source: L. 92:** Entire part R&RE, p. 1484, § 14, effective July 1.

**10-3-558. Subordination of claims for noncooperation.** If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within such receiver's control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class 7 as defined in section 10-3-541 (1) (g).

**Source: L. 92:** Entire part R&RE, p. 1484, § 14, effective July 1.

**10-3-559. Severability.** If any provision of this part 5 or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this part 5 and the application of such provision to other persons or circumstances shall not be affected thereby.

**Source: L. 92:** Entire part R&RE, p. 1484, § 14, effective July 1.

## PART 6

### EXCHANGE OF INSURANCE SECURITIES ACT

**10-3-601. Short title.** This part 6 shall be known and may be cited as the "Colorado Exchange of Insurance Securities Act".

**Source: L. 69:** p. 529, § 1. **C.R.S. 1963:** § 72-27-1.

**10-3-602. Exchange of securities.** (1) Any stock insurance company organized under the laws of this state, referred to in this part 6 as a "domestic company", may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for:

- (a) Shares of stock issued by an acquiring corporation; or
- (b) Other securities issued by an acquiring corporation; or
- (c) Cash; or
- (d) Other consideration; or
- (e) Any combination of such stock, other securities, cash, or other consideration.

**Source: L. 69:** p. 529, § 2. **C.R.S. 1963:** § 72-27-2.



**10-3-603. Acquiring corporation - definition.** (1) As used in this part 6, "acquiring corporation" means:

(a) Any stock insurance company organized under the laws of this state, other than the domestic company whose shareholders are to exchange their stock under a plan of exchange, as provided in this part 6; or

(b) Any stock corporation organized under the "Colorado Corporation Code" which is not an insurance company; or

(c) Any stock corporation which is not an insurance company and which was organized under any general law of this state prior to the effective date of the "Colorado Corporation Code" (January 1, 1959) and to which such code is applicable; or

(d) Any stock corporation organized under the laws of any state of the United States, whether or not an insurance company.

**Source:** L. 69: p. 529, § 3. C.R.S. 1963: § 72-27-3.

**Editor's note:** The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in subsection (1)(b) and (1)(c), was repealed, effective July 1, 1994, and replaced by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

**10-3-604. Procedure for exchange.** (1) Any domestic company may adopt a plan of exchange with any acquiring corporation providing for the exchange of the outstanding stock of the domestic company for shares of stock or other securities issued by the acquiring corporation, or cash, or other consideration, or any combination thereof, in the following manner:

(a) The boards of directors of the domestic company and of the acquiring corporation, by resolutions approved by a majority of the whole of each such board, shall adopt a plan of exchange which shall set forth the terms and conditions of the exchange and the mode of carrying the same into effect and such other provisions with respect to the exchange as may be deemed necessary or desirable.

(b) The domestic company and the acquiring corporation shall submit to the commissioner three copies of the plan of exchange certified by an officer of each as having been adopted in accordance with paragraph (a) of this subsection (1). Such copies of the plan of exchange shall be accompanied by:

(I) The annual statement of the domestic company for its last preceding calendar year prepared pursuant to section 10-3-208;

(II) Fully audited financial information as to the earnings and financial condition of the acquiring corporation for the preceding five fiscal years of each such acquiring corporation, or for lesser period as such acquiring corporation and any predecessors thereof have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the date of filing the statement;

(III) A pro forma financial statement of each acquiring corporation based on the assumption that the plan of exchange was effective as proposed at the end of the last preceding calendar year of the domestic company;

(IV) An estimate of expenses already incurred and expenses expected to be incurred in connection with the proposed plan of exchange;

(V) A written statement which sets forth for each corporation the proposed changes, if any, in management policies and the identity of officers and directors of the domestic company and of the acquiring corporation which are initially contemplated should the plan of exchange be effective as proposed; and

(VI) If the plan of exchange is submitted to the commissioner after March 31 of any year, a balance sheet of the domestic company, as of a date within ninety days prior to the date the plan is submitted, a summary of operations of the domestic company for the period between the preceding December 31 and the date of such balance sheet, and financial statements of each acquiring corporation based on the assumption that the plan of exchange was effective as proposed on the date of such balance sheet.

(c) The commissioner shall hold a hearing upon the fairness of: The terms, conditions, and provisions of the plan of exchange; and the proposed exchange of stock or other

securities of the acquiring corporation, or cash, or other consideration, or any combination thereof, for the stock of the domestic company, at which hearing the policyholders and the shareholders of both the domestic company and the acquiring corporation and any other interested party shall have the right to appear and to become party to the proceeding. The commissioner shall require the domestic company and the acquiring corporation to produce such evidence as he deems necessary to establish the fairness to be ascertained at the hearing, including in any event evidence concerning the valuation of the respective companies and the method utilized by the management of each corporation to accomplish such valuation, inclusive of the value established with respect to the stock of the domestic company which is proposed to be exchanged, as well as the value of the stock, securities, and consideration, other than cash, to be offered by the acquiring corporation in such exchange.

(d) Such hearing shall be commenced not less than twenty days after the date on which the plan of exchange is presented to the commissioner. The hearing shall be held in the city and county of Denver at such place, date, and time as the commissioner specifies. Notice of the hearing shall be published in a newspaper of general circulation in the city wherein is located the principal office of the domestic company and of the acquiring corporation, and in the city and county of Denver, once a week for two successive weeks. Written notice of the hearing shall be mailed at least ten days prior to the hearing by the domestic company and by the acquiring corporation to all of their respective shareholders. All expenses of publication shall be borne by the domestic company or the acquiring corporation, or both, as specified in the plan of exchange. The hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(e) The commissioner shall issue an order approving the plan of exchange as delivered to him by the domestic company and the acquiring corporation and such modifications therein as a majority of the whole board of directors of each such corporation approves if he finds: That the plan, including all such modifications, if effected, will not tend adversely to affect the financial stability or management of the domestic company or the general capacity or intention to continue the safe and prudent transaction of the insurance business of the domestic company or of the acquiring corporation if it is a domestic insurance company; that the interests of the policyholders and shareholders of the domestic company and, if the acquiring corporation is a domestic insurance company, the policyholders of the acquiring corporation are adequately protected; that the fulfillment of the plan will not affect either the contractual obligations of the domestic company and of the acquiring corporation, if it is a domestic insurance company, to its policyholders or the ability and tendency of either to render service to its policyholders in the future; that the effect of the merger or other acquisition of control would not substantially lessen competition in the business of providing insurance in this state or tend to create a monopoly therein; that all plans or proposals which the acquiring corporation has to liquidate the domestic company or to sell its assets, consolidate or merge it with any person, or make any other material change in its business or corporate structure or management have been fully disclosed and are not unfair or unreasonable to policyholders of the domestic company and are in the public interest; that the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would be in the interest of the policyholders of the domestic company and of the public to permit the merger or other acquisition of control; and that the terms and conditions of the plan of exchange and the proposed issuance and exchange are otherwise fair and reasonable.

(f) The order of the commissioner approving or disapproving the plan of exchange shall be filed in his office within sixty days after the date the plan of exchange is presented to him. Upon filing such order, the commissioner shall send a copy thereof to each party to the proceeding, such copy to be sent to each such party by certified mail directed to such party at the address of such party as shown by the record of the hearing. Any final order of the commissioner approving or disapproving a plan of exchange pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(g) The plan of exchange as approved by the commissioner shall be submitted to a vote of the shareholders of the domestic company at an annual or special meeting of the



shareholders. Notice of the submission of the plan to the shareholders shall be included in the notice of the meeting. The plan shall be approved by the shareholders of the domestic company upon receiving the affirmative votes of the holders of shares of the domestic company having at least two-thirds of the total voting power of the outstanding shares of the domestic company. Notwithstanding shareholder approval of the plan of exchange, and at any time prior to the filing of the certificate setting forth the plan of exchange by the commissioner pursuant to section 10-3-605, the plan of exchange may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of exchange.

(h) Within ten days after the plan of exchange is approved by the shareholders of the domestic company, a written notice of the approval of the plan of exchange shall be mailed or delivered personally to each shareholder of record of such company who was entitled to vote thereon. The domestic company shall thereafter file with the commissioner an affidavit of the secretary or an assistant secretary of such company, or of an officer of the transfer agent of such company, that such notice was given.

(i) Any shareholder of the domestic company owning shares not voted in favor of such plan at the meeting at which the plan was approved by the shareholders of the domestic company may object in writing to the plan and demand payment, should the plan become effective, of the fair value of any of such shares, as of the day on which the plan of exchange was approved by the shareholders of the domestic company pursuant to paragraph (g) of this subsection (1). Such objection and demand shall be received, together with the certificate representing the shares with respect to which objection and demand have been made, for notation thereon that such objection and demand have been made, by the domestic company or its transfer agent within thirty days after the date of said meeting of shareholders. No such objection and demand shall pertain to any shares which were voted in favor of the plan. No such objection and demand may be withdrawn unless the domestic company, by a duly authorized officer, consents thereto in writing.

(j) Upon the plan of exchange becoming effective, the holder of any shares, with respect to which such objection and demand have been made and certificates for which have been delivered to the domestic company or its transfer agent for notation, or any transferee thereof, shall cease to be a shareholder of the domestic company with respect to such shares and shall have no rights with respect to such shares, except the right to receive payment therefor in accordance with the provisions of paragraph (k) of this subsection (1). Every shareholder failing to make objection and demand accompanied by certificates representing the shares with respect to which such objection and demand have been made or withdrawing such objection and demand as provided in paragraph (i) of this subsection (1) shall be conclusively presumed to have assented to, and to have agreed to be bound by, the plan of exchange in accordance with its terms.

(k) Within forty-five days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, the domestic company, or, if the plan of exchange so specifies, the acquiring corporation, shall mail a written offer to each holder of record of shares with respect to which an objection and demand have been made, as provided in paragraph (i) of this subsection (1), to pay for such shares a price per share deemed by such corporation to be the fair value thereof as of the date of such meeting. The form of written offer to be used, including the price per share, shall first be submitted to and approved by the commissioner. If such offer is accepted in writing by such holder, such corporation shall pay such holder, within forty-five days after the date of the plan of exchange becoming effective, such price upon the surrender of the certificate representing such shares.

(l) If, within thirty days after the date of the mailing of such written offer, the domestic company or the acquiring corporation, as the case may be, and a shareholder do not agree on the price, such corporation or the shareholder may, within ninety days after the date of the mailing of such written offer, file a petition in any court of competent jurisdiction in the county where the registered office of the domestic company is located asking for a finding and determination of the fair value of such shares as of the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders; and payment of the fair value thereof shall be made by the domestic company or, if the plan of exchange so specifies, the acquiring corporation within sixty days after the

entry of the judgment or order determining such fair value, upon the surrender of the certificate representing such shares.

(m) All shares acquired by the domestic company, upon payment of the value therefor, shall be canceled by the board of directors of the domestic company, upon the plan of exchange becoming effective, or at any time thereafter in the manner provided in section 7-106-302 (2) (b), C.R.S., and any statement of cancellation made pursuant to said section shall first be filed with the commissioner prior to filing thereof with the secretary of state. If the commissioner finds such statement of cancellation to have been lawfully executed, and to be in due legal form and not in conflict with the provisions of law governing the domestic company, such statement of cancellation shall be filed with the secretary of state.

(n) If the plan of exchange does not become effective, the right of shareholders or transferees to be paid the fair value of their shares under this subsection (1) shall cease, and their status shall be the same as that of shareholders who voted in favor of the plan. If a shareholder or his transferee, with respect to any share for which objection and demand have been made: Withdraws such objection and demand in the manner provided by this subsection (1), or fails to submit a certificate at the time and in the manner required by this subsection (1), or does not file a petition for the determination of fair value within the time and in the manner provided in this subsection (1) and neither the domestic company nor the acquiring corporation files a petition for such determination, or is adjudged by a court of competent jurisdiction not to be entitled to the relief provided by this subsection (1), then the right of the shareholder or his transferee to be paid the fair value of such share shall cease, and his status with respect to such share shall be the same as that of a shareholder who voted in favor of the plan.

**Source:** L. 69: p. 529, § 4. C.R.S. 1963: § 72-27-4. L. 77: (1)(b) R&RE, p. 508, § 1, and (1)(e) amended, p. 509, § 2, effective June 3. L. 92: (1)(f) amended, p. 1553, § 49, effective May 20. L. 93: (1)(m) amended, p. 859, § 22, effective July 1, 1994.

**Cross references:** For annual financial statements, see § 10-3-208.

**10-3-605. Filing plan of exchange.** Not earlier than thirty-one days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, a certificate setting forth the plan of exchange, the manner of the approval thereof by the directors of the acquiring corporation and the domestic company, and the manner of its approval by the shareholders of the domestic company and the vote by which approved by the shareholders of the domestic company, or setting forth that the plan of exchange has been abandoned, shall be signed on behalf of each such corporation by its president or a vice-president and shall then be presented in triplicate to the commissioner at his office for filing. The commissioner shall file one copy of such certificate in his office and shall deliver copies bearing the date and time of filing endorsed thereon to the domestic company and the acquiring corporation. Upon the filing of such certificate, unless it sets forth that the plan of exchange has been abandoned, the plan of exchange and the issuance and exchange provided for therein shall become effective, unless a later date and time is specified in the plan of exchange, in which event the plan of exchange and the issuance and exchange provided for therein shall become effective upon such later date and time.

**Source:** L. 69: p. 533, § 5. C.R.S. 1963: § 72-27-5.

**10-3-606. Effect of exchange.** (1) Upon the plan of exchange becoming effective, the exchange provided for therein shall be deemed to have been consummated, each shareholder of the domestic company shall cease to be a shareholder of such company, the ownership of all shares of the issued and outstanding stock of the domestic company, except shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 10-3-604, shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing



such shares, and all shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 10-3-604, shall be deemed no longer outstanding shares of the domestic company.

(2) Certificates representing shares of the domestic company prior to the plan of exchange becoming effective, except certificates representing shares payment of the value of which is required to be made pursuant to section 10-3-604, and bearing a notation thereon that objection and demand pursuant to such section have been made, shall, after the plan of exchange becomes effective, represent: Shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation; and the right, if any, to receive such cash or other consideration upon such terms as are specified in the plan of exchange; but the plan of exchange may specify that all certificates representing shares of stock of the domestic company, except certificates representing shares payment of the value of which is required to be made pursuant to section 10-3-604, shall, after the plan of exchange becomes effective, represent only the right to receive shares of stock or other securities issued by the acquiring corporation, or cash, or other consideration, or any combination thereof, upon such terms as are specified in the plan of exchange. Certificates representing shares of the domestic company with respect to which an objection and demand have been made pursuant to section 10-3-604, and bearing a notation thereon that such objection and demand have been made, shall, after the plan of exchange becomes effective, represent only the right to receive payment therefor, subject to the provisions of this part 6.

**Source:** L. 69: p. 533, § 6. C.R.S. 1963: § 72-27-6.

**10-3-607. Authorized insurance business and regulatory authority.** Nothing contained in this part 6 shall be construed to authorize any insurance company to engage in any kind of insurance business not authorized by its articles of incorporation or to authorize any acquiring corporation which is not an insurance company to engage directly in the business of insurance.

**Source:** L. 69: p. 534, § 7. C.R.S. 1963: § 72-27-7.

**10-3-608. Domestic company and acquiring corporation separate and distinct entities.** The domestic company and the acquiring corporation shall in all respects be regarded in law as separate and distinct corporations, with neither of such corporations having any liability to the creditors, policyholders, if any, or shareholders of the other, any acts or omissions of the officers, directors, or shareholders of either or both of such corporations notwithstanding.

**Source:** L. 69: p. 534, § 8. C.R.S. 1963: § 72-27-8.

**10-3-609. Examination.** After any acquiring corporation becomes the owner of all the outstanding shares of a domestic company pursuant to a plan of exchange consummated under the provisions of this part 6, the commissioner may, in connection with any examination of the domestic company, examine all records and documents of the acquiring corporation pertaining to the relationships and transactions of the domestic company with the acquiring corporation or its subsidiaries or affiliates. If the acquiring corporation is organized under the laws of any state other than Colorado, the commissioner may, as a condition of approving the plan of exchange, require such acquiring corporation to file a written consent to examination of its records and documents as provided in this section.

**Source:** L. 69: p. 534, § 9. C.R.S. 1963: § 72-27-9.

**10-3-610. Application of this part 6.** Nothing contained in this part 6 shall be construed to prohibit the consummation of a plan of exchange of the kind described in section 10-3-602, without compliance with the provisions of this part 6, and, if any such

plan of exchange is consummated other than in compliance with this part 6, none of the provisions of sections 10-3-604 to 10-3-606 shall be applicable to such plan of exchange.

**Source:** L. 69: p. 534, § 10. C.R.S. 1963: § 72-27-10.

## PART 7

### REINSURANCE

**10-3-701. Right to reinsure.** No domestic insurer shall reinsure all or a substantial portion of the risks of any other insurer, and no domestic or foreign insurer licensed in this state shall have all or a substantial portion of its risks on policies written in this state or covering risks or property located in this state reinsured, unless such insurer complies with the provisions of section 10-3-702. The provisions of this section shall apply whether the reinsurance is accomplished by means of treaty, merger, consolidation, or otherwise.

**Source:** L. 71: p. 733, § 1. C.R.S. 1963: § 72-31-1. L. 73: p. 878, § 1.

**Cross references:** For conditions necessary for reinsurance, see § 10-3-118.

**10-3-702. Procedure.** (1) Any domestic insurer proposing to reinsure all or a substantial portion of the risks of any other insurer and any domestic or foreign insurer proposing to have all or a substantial portion of its risks on policies issued in this state or covering risks or property located in this state reinsured shall file a petition for approval with the commissioner.

(2) Such petition shall contain all the terms and conditions of the proposed transaction.

(3) If the commissioner deems it advisable, he may consider the petition at a public hearing.

(4) The commissioner may approve or disapprove the petition submitted, or he may approve it with such modifications as he deems to be in the best interests of policyholders and the public.

**Source:** L. 71: p. 733, § 1. C.R.S. 1963: § 72-31-2. L. 73: p. 878, § 2.

### ANNOTATION

**Disapproval of offset terms in reinsurance contracts by commissioner may be authorized by this section** if commissioner deems

such terms not to be in the best interests of policyholders and the public. *Bluewater Ins. Ltd. v. Balzano*, 823 P.2d 1365 (Colo. 1992).

**10-3-703. Reinsurance of less than all or substantial portion of risks.** The provisions of sections 10-3-701 and 10-3-702 shall not apply to the reinsurance of a portion of a company's risks which is less than a substantial portion thereof; but no domestic insurer shall have any portion of its risks which is less than a substantial portion thereof reinsured, and no foreign insurer licensed in this state shall have any portion of its risks which is less than a substantial portion thereof, on policies issued in this state or on risks or property located in this state, reinsured, unless the transaction has been approved by the commissioner.

**Source:** L. 71: p. 733, § 1. C.R.S. 1963: § 72-31-3.

**10-3-704. Prohibition.** Further reinsurance of any risks reinsured pursuant to sections 10-3-701 to 10-3-703, in or with a company not licensed in this state, without the approval of the commissioner, is prohibited.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-4.



**10-3-705. Remuneration.** No person who is or has been an officer, director, agent, or employee of any insurer involved in any reinsurance plan within the twelve months next preceding the transaction shall receive any fee, commission, compensation, or other valuable consideration whatsoever for aiding, promoting, or assisting in the drafting, adoption, or approval of such reinsurance plan.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-5.

**10-3-706. Policy reserve deposits.** A domestic life insurer approved by the commissioner to have any portion of its risks reinsured by a foreign insurer may be required to furnish the commissioner a complete reserve valuation of the risks involved by policy number, name, and address of each insured, and such insurer may be required to deposit with the commissioner securities having a market value at least equal to the aggregate reserve of the policies involved in such reinsurance, if the commissioner deems either or both to be necessary for the protection of the policyholders and the public. Such deposits shall remain with the commissioner until the obligations under the insurance contracts have been fulfilled; but withdrawals from the deposit may be made from time to time upon presentation to the commissioner of satisfactory evidence that the aggregate reserve for policies still outstanding on this portion of business has been reduced below the amount on deposit.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-6.

**10-3-707. Exception.** The provisions of sections 10-3-701 to 10-3-706 shall not apply to reinsurance effected under a treaty or an agreement wherein the ceding insurer continues to service the insurance contracts and remains liable thereunder.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-7. L. 79: Entire section amended, p. 382, § 2, effective May 25.

**10-3-708. Withdrawal from the state.** No licensed insurer shall be permitted to withdraw from the state and have its license and authority to transact all insurance business in Colorado canceled unless and until it has reinsured all of its risks on policies issued in this state, or on risks or property located in this state, with an insurer licensed in this state.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-8.

**10-3-709. Construction with other laws.** The provisions of this part 7 are supplementary to the provisions of section 10-3-118.

**Source:** L. 71: p. 734, § 1. C.R.S. 1963: § 72-31-9.

## PART 8

### INSURANCE HOLDING COMPANY SYSTEMS

**Cross references:** For the applicability of part 12 of article 4 of this title (producer-controlled property and casualty insurers) on the provisions of this part 8, see § 10-4-1205.

**10-3-801. Definitions.** As used in this part 8, unless the context otherwise requires:

(1) An “affiliate” of, or person “affiliated” with, a specific person means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specific person.

(2) “Commissioner” means the commissioner of insurance.

(3) “Control”, including the terms “controlling”, “controlled by”, and “under common control with”, means the possession, direct or indirect, of the power to direct or cause

the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with a corporation or a corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 10-3-804 (9) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

(5) "Insurer" has the same meaning as set forth in section 10-3-502 (12); except that it shall include fraternal benefit societies and health maintenance organizations and shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(6) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert but shall not include any securities broker performing no more than the usual and customary broker's function.

(7) "Securityholder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(8) "Subsidiary" of a specified person means an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(9) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

(10) "Wholly owned subsidiary" means a subsidiary owned by an insurer, which insurer owns shares of the issued and outstanding voting stock of such subsidiary having at least ninety-five percent of the total voting power of such stock for the election of directors.

**Source:** L. 71: p. 741, § 1. C.R.S. 1963: § 72-33-1. L. 92: (5) amended, p. 1485, § 15, effective July 1. L. 99: (5) amended, p. 85, § 8, effective July 1.

**10-3-802. Subsidiaries of insurers.** (1) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(a) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(b) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(c) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(d) Management of any investment company subject to or registered pursuant to the federal "Investment Company Act of 1940", as amended, including related sales and services;

(e) Acting as a broker-dealer subject to or registered pursuant to the federal "Securities Exchange Act of 1934", as amended;

(f) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;

(g) Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;

(h) Ownership and management of assets which the parent corporation could itself own or manage;



- (i) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
  - (j) Financing of insurance premiums, agents, and other forms of consumer financing;
  - (k) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business;
  - (l) Owning a corporation engaged or organized to engage exclusively in one or more of the businesses specified in this section; and
  - (m) Any other kind of business which in the opinion of the commissioner would be in the best interest of the insurer and would not be detrimental to the policyholders or the public.
- (2) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under other provisions of this title, a domestic insurer may also:
- (a) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders, if, after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there shall be included:
    - (I) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organization expenses and contributions to capital and surplus of such subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities; and
    - (II) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.
  - (b) If the insurer's total liabilities, as calculated for national association of insurance commissioners' annual statement purposes, are less than ten percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, if, after such investment, the insurer's surplus as regards policyholders, considering such investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
  - (c) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries if each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection (2) or in sections 10-3-213 to 10-3-242 applicable to the insurer. For the purpose of this paragraph (c), "the total investment of the insurer" includes:
    - (I) Any direct investment by the insurer in an asset; and
    - (II) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investments by the percentage of the insurer's ownership of such subsidiary.
  - (d) With the approval of the commissioner, invest any greater amount than that specified in this subsection (2) in common stock, preferred stock, debt obligations, or any other securities of one or more subsidiaries, if, after such investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; and
  - (e) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to or holding title to and managing or developing real or personal property, if, after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, and if following such investment all voting securities of such subsidiary would be owned by the insurer.
- (3) Regardless of any provision of this title to the contrary, investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made in accordance with subsection (2) of this section shall be admitted assets of a domestic insurer, and

such investments shall not be subject to any of the otherwise applicable restrictions or limitations applicable to such investments of insurers.

(4) Any provision of this title to the contrary notwithstanding, any investment by a domestic insurer in the common stock, preferred stock, debt obligations, or other securities of one or more insurance companies which are wholly owned subsidiaries of such domestic insurer shall be admitted assets thereof subject to the following provisions:

(a) If the authorized lines of business of the investing company and any such wholly owned subsidiary corporation together do not constitute the lines of business of a multiple line company, the common stock, preferred stock, debt obligations, and other securities of such subsidiary corporation shall not at any time be an admitted asset of the investing company unless at such time the two companies have, without taking such common stock, preferred stock, debt obligations, and other securities into account as an asset of the investing company, a combined capital or guaranty fund and a combined surplus which are at least equal, respectively, to the sum of the minimum capital or minimum guaranty fund required by law for the authorized line of business of each of the two companies and the sum of the minimum surplus required by law for the authorized line of business of each of the two companies, but this paragraph (a) shall not apply to an investing company which is a fraternal benefit society.

(b) If the authorized lines of business of the investing company and any such wholly owned subsidiary corporation together constitute the lines of business of a multiple line company, the common stock, preferred stock, debt obligations, and other securities of such subsidiary corporation shall not at any time be an admitted asset of the investing company unless at such time the two companies have, without taking such stock into account as an asset of the investing company, a combined capital or guaranty fund and a combined surplus which are at least equal, respectively, to the minimum capital or guaranty fund and the minimum surplus required by law for such multiple line company.

(c) If the authorized lines of business of any two insurance companies which are members of a chain of corporations directly or indirectly owned by a common parent corporation shall together constitute the lines of business of a multiple line company, the common stock, preferred stock, debt obligations, and other securities of either of such two insurance companies shall at any time be an admitted asset of any insurance company, including the common parent corporation, which is a member of such chain of corporations, unless at such time such two insurance companies have a combined capital or guaranty fund and a combined surplus which are at least equal, respectively, to the minimum capital or guaranty fund and the minimum surplus required by law for such a multiple line company.

(5) Whether any investment pursuant to subsection (2) of this section meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities. Such value shall be determined as of the date of the latest investment, applying section 10-3-231.

(6) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless, at any time after such investment has been made, such investment has met the requirements for investment under any other provision of this title, and the insurer has notified the commissioner thereof.

(7) Nothing in this part 8 shall be construed to prohibit a domestic insurer which, prior to and with the approval of the commissioner, organized or acquired a subsidiary from continuing to hold such insurer's investments in such subsidiary or from making further investments therein consistent with the provisions of subsection (2) of this section, if such subsidiary engages only in the kind of business which was represented to the commissioner as a basis for such approval.

**Source:** L. 71: p. 742, § 1. C.R.S. 1963: § 72-33-2. L. 86: IP(2)(a), IP(2)(c), (2)(d), and (5) amended, p. 562, § 1, effective April 21.

**Cross references:** For the "Investment Company Act of 1940", see 15 U.S.C. § 80a-1 et seq., and for the "Securities Exchange Act of 1934", see 15 U.S.C. § 78a et seq.



**10-3-803. Acquisition of control of or merger with domestic insurer.** (1) (a) No person other than the issuer shall make a tender offer for, or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

(b) In addition, if such person is an individual, the person shall submit a set of fingerprints to the commissioner pursuant to subsection (2.5) of this section. If such person is a corporation, each executive officer and director of the corporation shall submit a set of fingerprints to the commissioner pursuant to subsection (2.5) of this section.

(c) For purposes of this section, a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(a) (I) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected, referred to in this part 8 as the “acquiring party”;

(II) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(III) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence; an informative description of the business intended to be done by such person and such person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (II) of this paragraph (a).

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the insurer’s stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, but, where a source of such consideration is a loan made in the lender’s ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement; except that, in the case of individuals, if audited financial information is not available, this requirement may be waived, at the discretion of the commissioner, and unaudited financial information may be accepted by the division of insurance;

(d) Any plans or proposals which each acquiring party has to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in said subsection (1), and a statement as to the method by which the fairness of the proposal was arrived at;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section and, if distributed, copies of additional soliciting material relating thereto;

(k) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(2.5) Each person described in paragraph (b) of subsection (1) of this section shall submit a set of fingerprints to the commissioner at the time of filing the statement described in paragraph (a) of subsection (1) of this section. The commissioner shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the employer.

(3) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (l) of subsection (2) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of subsection (2) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send a synopsis of any material changes in such amendment to its shareholders.

(4) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the federal "Securities Act of 1933" or in circumstances requiring the disclosure of similar information under the federal "Securities Exchange Act of 1934", or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize such documents in furnishing the information called for by that statement.



(4.5) (a) The commissioner shall conduct an independent investigation to determine the impact of a proposed merger on competition:

(I) When the proposed merger involves a transaction that the commissioner determines under section 10-3-803.5 (2) would present prima facie evidence of a violation of the competitive standard; and

(II) If the merger or acquisition involves a domestic entity authorized under article 16 of this title or section 6-18-302 (1) (b) (IV), C.R.S., or a domestic insurer authorized under section 10-3-102 that writes more than fifty percent of its business as health insurance coverage.

(b) The investigation shall include an analysis of the probable effects of the merger on consumers and on suppliers of services. The commissioner shall not rely solely on representations of insurers to determine whether the merger will produce economies of scale or economies in resource utilization that cannot be achieved feasibly in any other way. The investigation shall also include, but not be limited to, reviewing the market conduct examination and financial examination reports for this state or any other state, consumer complaint information from records maintained by the division or any other state regulatory agency, and any information from any state or federal agency related to the applicant. The investigation shall commence no later than fifteen days after the filing of the form E by the applicant.

(c) The commissioner shall make public the report of the independent investigation conducted pursuant to this subsection (4.5) no later than five business days after the submission of such report to the commissioner, subject to the provisions of the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(d) The commissioner shall issue an executive summary, subject to the provisions of the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., of the competitive impact analysis filed by the applicant to the transaction no later than fifteen business days after the analysis is filed with the division. The competitive impact analysis shall be filed by the applicant at the same time the applicant files its form E with the division.

(e) All data and reports pertaining to the proposed merger and collected or used by the commissioner in his or her investigation and analysis shall be made available to the public; except that, in the commissioner's discretion, specific items of proprietary information may be redacted. If the insurer claims that information provided is proprietary, the insurer has the burden of proof on that issue.

(f) The independent investigation pursuant to this subsection (4.5) shall be completed no later than the day on which the application is deemed complete by the division of insurance. The commissioner shall coordinate the completion of this independent investigation with the experts retained pursuant to subsection (6) of this section. Any expenses associated with the independent investigation shall be borne by the applicant pursuant to subsection (6) of this section.

(5) The commissioner shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after an independent investigation pursuant to subsection (4.5) of this section, and public hearing thereon, the commissioner finds that:

(a) After the change of control the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for the issuance of a license to write the line of insurance for which it is presently licensed;

(b) Repealed.

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

(d) Repealed.

(e) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(g) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in this paragraph (g):

(I) The standards of section 10-3-803.5 shall apply;

(II) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by section 10-3-803.5 (4) exist; and

(III) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time; or

(h) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(6) (a) The commissioner shall provide public notice of the filing of an application of merger or acquisition no later than five business days after the receipt of the initial application. The commissioner shall also provide a general statement to the public of the process and procedures concerning a merger or acquisition of a domestic insurer. This statement shall be a clear and concise statement of how the public may participate in the review of a merger or acquisition transaction including a public hearing or providing written comments to the commissioner.

(b) No later than fifteen business days after the initial application for a merger pursuant to this section, the commissioner and the applicant shall establish the elements of a public notice of the transaction. The notice will be provided and made public no later than seven days after the application is deemed complete by the division.

(c) The public hearing referred to in subsection (5) of this section shall be held within thirty days after the statement required by subsection (1) of this section is filed, and at least twenty days' notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of such public hearing shall be given, pursuant to paragraph (b) of this subsection (6), to the insurer and to the public. The insurer shall give such notice to its security holders. The commissioner shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and, in connection therewith, are entitled to conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings shall be concluded no later than three days prior to the commencement of the public hearings. The commissioner may retain, at the acquiring party's expense, any attorneys, actuaries, accountants, and other experts as may reasonably be necessary to assist the commissioner in reviewing the proposed acquisition of control.

(d) There shall be a period of ten business days for submission of written public comment after the hearing to respond to testimony from the applicant. The commissioner shall review all responses and provide a report summarizing all public testimony.

(7) A synopsis of the statement required in subsection (1) of this section, and all notices of public hearings held pursuant to subsection (5) of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices filed pursuant to this section. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(8) The provisions of this section shall not apply to:

(a) Repealed.

(b) Any exchange of stock of a domestic insurer actually accomplished in accordance with sections 10-3-604 to 10-3-606, or any preliminary agreement between a domestic insurer and any other corporation entered into in contemplation of the adoption of a plan of exchange under part 6 of this article;

(c) Any offer, request, invitation, agreement, or acquisition which the commissioner by order exempts therefrom as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.



(9) The following are violations of the provisions of this section:

(a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(10) The courts of this state are vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving any such person arising out of violations of this section, and each such person is deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

(11) If the procedures set forth in this section are not followed prior to the issuance of the order of the commissioner that approves or disapproves the merger, the aggrieved party may seek remedies pursuant to section 10-3-813.

(12) Nothing in this section shall limit the commissioner's ability to conduct a hearing for transactions that do not meet the requirements in subsection (4.5) of this section.

**Source:** L. 71: p. 745, § 1. C.R.S. 1963: § 72-33-3. L. 86: (1), (2)(b), (2)(c), (3), (5)(c), (5)(e), (6), and (7) amended, (5)(g) and (5)(h) added, and (5)(b) and (5)(d) repealed, pp. 563, 571, §§ 2, 10, effective April 21. L. 92: (8)(a) repealed, p. 1554, § 50, effective May 20. L. 2002: (1) amended and (2.5) added, p. 971, § 2, effective June 1. L. 2008: (4.5), (11), and (12) added and IP(5) and (6) amended, p. 664, § 1, effective August 5. L. 2009: (4.5)(c) and (4.5)(d) amended, (SB 09-292), ch. 369, p. 1942, § 12, effective August 5.

**Cross references:** For the "Securities Act of 1933", see 15 U.S.C. § 77a et seq., and for the "Securities Exchange Act of 1934", see 15 U.S.C. § 78a et seq.

### **10-3-803.5. Standards for determining whether competition will be lessened.**

(1) As used in this section:

(a) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(b) "Insurer" includes any company or group of companies under common management, ownership, or control.

(c) "Involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(d) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners. The commissioner shall also give due consideration to information, if any, submitted by parties to the acquisition or by members of the public; except that the commissioner shall not rely solely on information submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business which line is that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state.

(2) In determining whether a proposed acquisition would lessen competition or tend to create a monopoly as described in section 10-3-803 (5) (g), the commissioner shall consider the following:

(a) (I) Any acquisition involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard if one of the following occurs:

(A) The market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more

(B) The market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more

(II) A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in section 10-3-803 (5) (g). For the purpose of this paragraph (a), the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market from the two largest to the eight largest has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in section 10-3-803 (5) (g) if the following occur:

(I) There is a significant trend toward increased concentration in the market;

(II) One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(III) Another involved insurer's market is two percent or more.

(3) Even though an acquisition is not prima facie violative of the competitive standard in section 10-3-803 (5) (g), the commissioner may establish the requisite anticompetitive effect, and even though an acquisition is prima facie violative of the competitive standard in section 10-3-803 (5) (g), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subsection (3) include, but are not limited to, the following: Market shares; volatility of ranking of market leaders; number of competitors; concentration; trend of concentration in the industry; and ease of entry and exit into the market.

(4) The commissioner shall not disapprove an acquisition or merger on the ground that it would tend to lessen competition if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be achieved feasibly in any other way and the public benefits that would arise from such economies exceed the public benefits that would arise from not lessening competition. The commissioner shall not rely solely on information submitted by representatives of the insurers in making this determination.

(b) The acquisition will substantially increase the availability of insurance and the public benefits of such increase exceed the public benefits that would arise from not lessening competition.



**10-3-804. Registration of insurers.** (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section and section 10-3-805 (1). Such insurer shall file a copy of the registration statement and summary as required by this section. Any insurer which is subject to registration under this section shall register within sixty days after July 1, 1971, or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding between such insurer and its affiliates:

(I) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(II) Purchases, sales, or exchanges of assets;

(III) Transactions not in the ordinary course of business;

(IV) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(V) All management and service contracts and all cost-sharing arrangements;

(VI) Reinsurance agreements;

(VII) Consolidated tax allocation agreements;

(VIII) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit; and

(IX) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interest of such insurer's policyholders.

(d) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

(e) Any pledge of the insurer's assets, including stock of any subsidiary or affiliate, for a loan made to any member of the insurance holding company system.

(2.1) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(3) No information need be disclosed on the registration statement filed pursuant to subsection (2) of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. Transactions of like kind entered into in a series pursuant to a plan for the purpose of avoiding the materiality standard of this subsection (3) shall be deemed to be one single transaction.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition; except that, subject to section 10-3-805 (3), each

registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

(5) The commissioner shall terminate the registration issued under this section of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(7) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(8) The provisions of this section shall not apply to any insurer, information, or transaction to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(9) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person, unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support such disallowance.

(10) The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing is a violation of this section.

(11) Any person within an insurance holding company system subject to registration pursuant to this section shall be required to provide complete and accurate information to an insurer if such information is reasonably necessary to enable the insurer to comply with the provisions of this part 8.

**Source:** L. 71: p. 749, § 1. C.R.S. 1963: § 72-33-4. L. 86: (1), IP(2)(c), (2)(c)(V), (2)(c)(VI), and (3) amended and (2)(c)(VII), (2)(c)(VIII), (2)(c)(IX), (2)(e), (2.1), and (11) added, pp. 567, 568, §§ 4-6, effective April 21.

**10-3-805. Standards.** (1) Material transactions within an insurance holding company system by registered insurers shall be subject to the following standards:

(a) The terms shall be fair and reasonable.

(b) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(c) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate for its financial needs.

(d) The charges or fees for services performed shall be reasonable.

(e) The expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(2) (a) For the purposes of this part 8 in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate for its financial needs, the following factors, among others, shall be considered:

(I) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(II) The extent to which the insurer's business is diversified among the several lines of insurance;



(III) The number and size of risks insured in each line of business;  
(IV) The extent of the geographical dispersion of the insurer's insured risks;  
(V) The nature and extent of the insurer's reinsurance program;  
(VI) The quality, diversification, and liquidity of the insurer's investment portfolio;  
(VII) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(VIII) The surplus as regards policyholders maintained by other comparable insurers;  
(IX) The adequacy of the insurer's reserves;  
(X) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions;

(XI) The quality and liquidity of investments in subsidiaries made pursuant to section 10-3-802. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders, whenever such investment so warrants.

(XII) Any other situation not described in this paragraph (a) which may render the operations of the insurer hazardous to the public or its policyholders.

(b) Each year the division shall review the ordinary shareholder dividends paid by domestic insurers to determine whether such dividends are reasonable. In conducting such review the division shall consider:

(I) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments; and

(II) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions.

(c) The division, consistent with the standards in paragraph (a) of this subsection (2), may promulgate rules defining when an insurer's surplus as regards policyholders is not reasonable and adequate. The division may also promulgate rules that limit or disallow the payment of shareholder dividends whenever it determines that an insurer is financially distressed or troubled.

(d) Shareholder dividends shall be declared or paid only from earned surplus, unless the division approves the dividend prior to payment. For purposes of this paragraph (d), "earned surplus" excludes surplus arising from unrealized capital gains or a revaluation of assets.

(3) No insurer subject to registration under section 10-3-804 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or the commissioner has approved such payment within such thirty-day period. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of ten percent of such insurer's surplus as regards policyholders as of December 31 next preceding, or the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending December 31 next preceding but shall not include pro rata distributions of any class of the insurer's own securities. Any other provision of law to the contrary notwithstanding, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration confers no rights upon shareholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty-day period referred to in this subsection (3).

(4) (a) The transactions specified in this paragraph (a) involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period. Such transactions include:

(I) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if such transactions are equal to or exceed as of December 31 next preceding:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;

(B) With respect to life insurers, three percent of the insurer's admitted assets;

(II) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, if such transactions are equal to or exceed as of December 31 next preceding:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;

(B) With respect to life insurers, three percent of the insurer's admitted assets;

(III) Reinsurance proposals or cover notes or modifications to existing agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(IV) All material transactions affecting management agreements, service contracts, and all cost-sharing arrangements; and

(V) Any material transactions specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (4) shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(4.5) Any domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report such declaration to the division within five days thereafter and at least ten business days before the payment. If the division, applying the criteria in paragraph (a) of subsection (2) of this section, determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, it may, prior to the expiration of the ten-day period described in this subsection (4.5), enter an order prohibiting the payment of the dividend. At the request of the insurer the division shall promptly set the matter for hearing. The commissioner shall enter a final order within thirty days of completion of the hearing. Any order prohibiting the payment of a dividend shall remain in effect pending entry of a final order by the commissioner. The division may, taking into consideration the factors set forth in paragraph (a) of subsection (2) of this section, promulgate rules concerning the reporting of proposed dividends and the conduct of hearings pertaining thereto.

(5) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, the commissioner may exercise authority pursuant to section 10-3-810.

(6) In reviewing transactions pursuant to subsection (4) of this section, the commissioner shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether such transactions may adversely affect the interests of policyholders.

(7) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

**Source:** L. 71: p. 751, § 1. C.R.S. 1963: § 72-33-5. L. 86: IP(1), (1)(b), and (3) amended and (1)(d) and (1)(e) added, p. 568, § 7, effective April 21. L. 92: (4), (5), (6),



and (7) added, p. 1554, § 51, effective May 20; (3) amended, p. 1485, § 16, effective October 30, 1993. **L. 93:** (2) and (3) amended and (4.5) added, p. 483, § 1, effective October 30.

**10-3-806. Examination.** (1) Subject to the limitation contained in this section and in addition to the other powers which the commissioner has under this title relating to the examination of insurers, the commissioner has the power to order any insurer registered under section 10-3-804 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner has the power to examine such affiliates to obtain such information.

(2) The commissioner shall exercise his power under subsection (1) of this section only if the examination of the insurer under other sections of this title is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) of this section is liable for and shall pay the expense of such examination in accordance with part 2 of article 1 of this title.

**Source:** **L. 71:** p. 752, § 1. **C.R.S. 1963:** § 72-33-6. **L. 92:** (4) amended, p. 1485, § 17, effective July 1.

**10-3-807. Confidential treatment.** All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 10-3-806 and all information reported pursuant to section 10-3-804 shall be given confidential treatment and shall not be subject to subpoena or made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains, unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the disclosure thereof, in which event he may disclose all or any part thereof in such manner as he deems appropriate.

**Source:** **L. 71:** p. 753, § 1. **C.R.S. 1963:** § 72-33-7.

**10-3-808. Rules and regulations.** The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this part 8.

**Source:** **L. 71:** p. 753, § 1. **C.R.S. 1963:** § 72-33-8.

**10-3-809. Injunctions - prohibitions against voting securities - sequestration of voting securities.** (1) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this part 8 or of any rule, regulation, or order issued by the commissioner, the commissioner may apply to the district court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this state, to the district court for the city and county of Denver, for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this part 8 or any such rule, regulation, or order, and for such other equitable relief as the nature of the case

and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(2) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this part 8 or of any rule, regulation, or order issued by the commissioner may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this part 8 or of any rule, regulation, or order issued by the commissioner, the insurer or the commissioner may apply to the district court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this state, to the district court for the city and county of Denver for an order to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 10-3-803, or any rule, regulation, or order issued by the commissioner under said section to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this part 8 or any rule, regulation, or order issued by the commissioner, the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by such person and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this part 8. Any provision of the law to the contrary notwithstanding, for the purposes of this part 8 the situs of the ownership of the securities of domestic insurers is deemed to be in this state.

**Source: L. 71: p. 753, § 1. C.R.S. 1963: § 72-33-9.**

**10-3-810. Criminal proceedings - civil penalties.** (1) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part 8, the commissioner may cause criminal proceedings to be instituted in the district court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this state, in the district court for the city and county of Denver against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this part 8 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any individual who willfully violates this part 8 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) (a) Any insurer or any director, officer, employee, or agent thereof failing, without just cause, to file any registration statement, amendment, or notice of shareholder distribution as required in this part 8 may be required, after notice and hearing, to pay a civil penalty of not more than five thousand dollars for each violation. Each violation shall be a separate offense. The commissioner shall issue an order setting forth the amount of the civil penalty, which amount shall be based on the alleged violator's history of previous violations, the good faith of the alleged violator in attempting to achieve rapid compliance after notification of the violation, the gravity and willfulness of the violation, the potential deterrent effect of the civil penalty, and such other considerations as may be specified by the commissioner. The commissioner shall have the power to compromise, mitigate, or remit any such civil penalty.

(b) For purposes of this subsection (2), "civil penalty" means any monetary penalty levied against any insurer or any director, officer, employee, or agent thereof because of a



violation of this part 8. "Civil penalty" does not include any criminal penalty levied under subsection (1) of this section.

(c) All civil penalties collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**Source:** L. 71: p. 754, § 1. C.R.S. 1963: § 72-33-10. L. 77: Entire section amended, p. 870, § 23, effective July 1, 1979. L. 86: Entire section amended, p. 569, § 8, effective April 21. L. 89: (1) amended, p. 821, § 9, effective July 1. L. 2002: (1) amended, p. 1468, § 25, effective October 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

**10-3-811. Delinquencies.** Whenever it appears to the commissioner that any person has committed a violation of this part 8 which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, its creditors, its shareholders, or the public, the commissioner may proceed as provided in part 4 or part 5 of this article.

**Source:** L. 71: p. 754, § 1. C.R.S. 1963: § 72-33-11. L. 92: Entire section amended, p. 1485, § 18, effective July 1.

**10-3-812. Revocation, suspension, or nonrenewal of insurer's license.** Whenever it appears to the commissioner that any person has committed a violation of this part 8 which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

**Source:** L. 71: p. 754, § 1. C.R.S. 1963: § 72-33-12.

**10-3-813. Judicial review - mandamus.** (1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the commissioner pursuant to this part 8 may appeal therefrom to the district court for the city and county of Denver. The court shall conduct its review without a jury and by trial de novo; except that, if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(2) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(3) Any person aggrieved by any failure of the commissioner to act or make a determination required by this part 8 may petition the district court for the city and county of Denver for an action in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

**Source:** L. 71: p. 755, § 1. C.R.S. 1963: § 72-33-13.

**10-3-814. Recovery of distributions or payments.** (1) If a receiver has been appointed by a court of this state, such receiver shall have a right to recover on behalf of a domestic insurer, either from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock, paid by the insurer on its capital stock, or from any director, officer, or employee, any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary. Such recovery shall be made where the distribution or payment is made at any time within one year preceding the petition for liquidation, conservation, or rehabilitation subject to the limitations of this section.

(2) No distribution or payment shall be recoverable pursuant to this section if the parent, affiliate, or other person shows that when the distribution or payment was paid such distribution or payment was lawful and reasonable and that the insurer did not know and could not reasonably have known that such distribution or payment might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time distributions described in subsection (1) of this section were paid shall be liable up to the amount of distributions or payments such person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse the Colorado insurance guaranty fund.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it pursuant to said subsection, its parent corporation, holding company, or the person who otherwise controlled it at the time the distribution was paid shall be liable for any resulting deficiency in the amount recovered from such parent corporation, holding company, or person who otherwise controlled it.

**Source: L. 86:** Entire section added, p. 570, § 9, effective April 21.

## PART 9

### UNAUTHORIZED INSURANCE

**10-3-901. Short title.** This part 9 shall be known and may be cited as the "Regulation of Unauthorized Insurance Act".

**Source: L. 67:** p. 873, § 10. **C.R.S. 1963:** § 72-25-10.

**10-3-902. Legislative declaration.** The purpose of this part 9 is to subject certain persons and insurers to the jurisdiction of the commissioner, of proceedings before the commissioner, and of the courts of this state in suits. The general assembly declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar and are deprived of the benefit of Colorado laws regulating insurance. The general assembly declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets; by protecting the premium tax revenues of this state; by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers; and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance



of such state interest, the general assembly in this part 9 exercises its power to protect residents of this state and to define what constitutes transacting insurance business in this state.

**Source: L. 67: p. 868, § 1. C.R.S. 1963: § 72-25-1.**

**10-3-903. Definition of transacting insurance business.** (1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer constitute transacting insurance business in this state as the term is used in section 10-3-105:

- (a) The making of, or proposing to make, as an insurer, an insurance contract;
  - (b) The making of, or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
  - (c) The taking or receiving of any application for insurance;
  - (d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;
  - (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
  - (f) Directly or indirectly acting as an agent for or otherwise representing, or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof; or in the dissemination of information as to coverage or rates; or in the forwarding of applications; or in the delivery of policies or contracts; or in the inspection of risks; or in the fixing of rates; or in the investigation or adjustment of claims or losses; or in the transaction of matters subsequent to the effectuation of the contract and arising out of it; or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. The provisions of this paragraph (f) shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such employer.
  - (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;
  - (h) The doing, or proposing to do, any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes;
  - (i) Any other transactions of business in this state by an insurer;
  - (j) Funding, either directly or indirectly, the cash qualification bond of a cash-bonding agent or professional cash-bail agent when the means do not constitute an arm's-length transaction under reasonable commercial standards or where the agreement to repay is contingent on the volume or value of the bonds posted;
  - (k) Except for payments from the defendant or a third-party indemnitor who applied for the bond, paying, either directly or indirectly, for the forfeiture of a bail bond posted by a cash-bonding agent or professional cash-bail agent when the payment is made by a person other than the cash-bonding agent or professional cash-bail agent that posted the bail bond.
- (2) The provisions of this section do not apply to:
- (a) The lawful transaction of surplus lines insurance;
  - (b) The lawful transaction of reinsurance by insurers;
  - (c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;
  - (d) Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid;
  - (e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
  - (f) Transactions in this state involving group life or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business;

(g) The transaction of business by a preowned home warranty service company pursuant to part 6 of article 61 of title 12, C.R.S.;

(h) Transactions in this state involving group sickness and accident or blanket sickness and accident insurance where the master policy was lawfully issued and delivered to a single employer in another state in which the company was authorized to do an insurance business, when a master policy which covers residents of this state includes mammography benefits at a level at least as comprehensive as those required by section 10-16-104 (18) (b) (III);

(i) Any transaction in this state involving the issuance of a charitable gift annuity, as defined in section 10-1-102 (4);

(j) The sale of authorized insurance by agents of a motor vehicle rental company if such sale complies with the limitations set forth in section 10-2-105 (2) (g);

(k) Participation in a direct provider contracting pilot program pursuant to section 25.5-5-413, C.R.S.;

(l) A person licensed as a cash-bonding agent or professional cash-bail agent under article 23 of this title, unless the person engages in conduct described in subsection (1) of this section.

**Source:** L. 67: p. 868, § 2. C.R.S. 1963: § 72-25-2. L. 79: (2)(g) added, p. 582, § 2, effective June 7. L. 91: (2)(f) amended and (2)(h) added, p. 1213, § 6, effective July 1. L. 92: (2)(h) amended, p. 1750, § 1, effective May 29; (2)(h) amended, p. 1750, § 2, effective July 1. L. 95: (2)(i) added, p. 218, § 2, effective April 17. L. 98: (2)(j) added, p. 234, § 4, effective April 10. L. 2001: (2)(j) amended, p. 1213, § 37, effective January 1, 2002. L. 2003: (2)(i) amended, p. 617, § 11, effective July 1; (2)(k) added, p. 1784, § 15, effective July 1. L. 2006: (2)(k) amended, p. 1998, § 31, effective July 1. L. 2009: (2)(h) amended, (HB 09-1204), ch. 344, p. 1806, § 3, effective January 1, 2010. L. 2012: IP(1) amended and (1)(j), (1)(k), and (2)(l) added, (HB 12-1266), ch. 280, p. 1507, § 36, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsections (1)(j), (1)(k), and (2)(l) and amending the introductory portion to subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** (1) For reinsurance, see part 7 of this article; for surplus line insurance, see article 5 of this title.

(2) For the legislative declaration contained in the 1998 act enacting subsection (2)(j), see section 1 of chapter 88, Session Laws of Colorado 1998. For the legislative declaration contained in the 2009 act amending subsection (2)(h), see section 1 of chapter 344, Session Laws of Colorado 2009.

**10-3-903.5. Jurisdiction over providers of health care benefits.** (1) Notwithstanding any other provision of law, and except as provided in this section, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the division of insurance, unless such person or entity shows that while providing such services it is subject to the jurisdiction of another agency of this state, any subdivisions thereof, or the federal government.

(2) A person or other entity may show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the other governmental agency which permits or qualifies it to provide those services. Nothing in this section shall be construed to in any way limit the ability of the division of insurance to regulate insurance companies, multiple employer trusts, multiple employer welfare arrangements, association health plans, or preferred provider organizations.

(3) Any person or other entity which is unable to show under subsection (2) of this section that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the insurance



commissioner to determine the organization and solvency of the person or the entity, and to determine whether such person or entity complies with the applicable provisions of this article.

(4) Any person or other entity unable to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this article regarding the conduct of its business.

(5) Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in subsection (1) of this section and which is required to submit to an examination by the insurance commissioner under subsection (3) of this section, shall, if said coverage is not fully insured or otherwise fully covered by an admitted sickness and accident insurer, nonprofit hospital, medical, surgical, and health service corporation, prepaid dental care plan, or health maintenance organization, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(6) Any administrator which advertises or administers the coverage in this state described in subsection (1) of this section and which is required to submit to an examination by the insurance commissioner under subsection (3) of this section, shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect.

(7) (a) The provisions of this section and any other laws of this state that regulate insurance or insurance companies shall not apply to any multiple employer health trust which meets the requirements of paragraph (b) of this subsection (7) or any multiple employer welfare arrangement which meets the requirements of paragraph (c) of this subsection (7). Any such trust or arrangement shall be subject to the requirements of this subsection (7) and section 10-3-1104. The exemption provided by this subsection (7) shall not apply to any entity if the division of insurance determines that its operation is hazardous to the public or to individuals receiving benefits.

(b) A multiple employer health trust is any trust which is:

(I) Sponsored, maintained, and funded by one or more entities of state government or political subdivisions of the state organized pursuant to state law and is for the benefit of the entity's employees; or

(II) Established and maintained pursuant to the provisions of a collective bargaining agreement between one or more unions and employers or an association of employers for the benefit of employees who are covered by such agreement, and pursuant to which health benefits, wages, pension benefits, and other terms of employment have been bargained for in good faith and the sponsoring union provides services and benefits to its members other than health benefits.

(c) A multiple employer welfare arrangement is any arrangement which complies with the following requirements:

(I) The multiple employer welfare arrangement shall have been in existence continuously since at least January 1, 1983, and shall maintain unallocated reserves of not less than five percent of the first two million dollars of annual contributions made to such arrangement in the preceding year.

(II) The multiple employer welfare arrangement shall file its annual financial statement with the division within sixty days after the end of its fiscal year to demonstrate that the required reserves are being maintained, and it shall file its audited financial statement with the division within the time period that insurance companies are required to file such statements.

(III) The multiple employer welfare arrangement shall file an actuarial opinion with the division which states that the reserves and the contribution and funding levels of the arrangement are adequate and which includes the underlying actuarial report in support of the opinion in accordance with the requirements of section 10-7-114, and such arrangement shall file such opinion and report within the time period that insurance companies are required to file such actuarial opinion.

(IV) The multiple employer welfare arrangement shall provide benefits which are in substantial compliance with the mandated benefit provisions that are applicable to insurers offering health insurance coverage in this state.

(V) The multiple employer welfare arrangement shall be sponsored and maintained by an association which:

(A) Has within its membership the employers who participate in and fund the arrangement;

(B) Is engaged in substantial activities for its employer members, other than the sponsorship of an employee welfare benefit plan, and provides business or professional assistance and benefits to its members who share a common business interest and are primarily engaged in the same trade or business; and

(C) Has been in existence for a period of at least ten years.

**Source:** L. 91: Entire section added, p. 1206, § 3, effective July 1. L. 93: (7) added, p. 256, § 1, effective March 31.

#### ANNOTATION

**This section is not inconsistent with the federal Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 et seq., and is therefore not preempted by 29 U.S.C.**

§ 1144(a). Fuller v. Norton, 881 F. Supp. 468 (D. Colo. 1995), aff'd, 86 F.3d 1016 (10th Cir. 1996).

**10-3-904. Commissioner may enjoin unauthorized company.** Whenever the commissioner of insurance believes, from evidence satisfactory to him, that any foreign or alien company is violating the provisions of section 10-3-105 and this part 9, the commissioner may, through the attorney general of this state, cause a complaint to be filed in the district court in and for the city and county of Denver to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court has jurisdiction of the proceeding and has the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

**Source:** L. 67: p. 869, § 3. C.R.S. 1963: § 72-25-3.

#### ANNOTATION

**Claims asserted against the state attorney general must be dismissed** where the ground for the claim is that she is charged under Colorado law with enforcing Colorado's statutory provisions governing the business of insurance, including the enforcement of workers' compensation statutes, when in fact she is not respon-

sible for enforcing either insurance or workers' compensation laws and may become involved in prosecuting related matters only at the request of the commissioner of insurance or the director of workers' compensation. Fuller v. Norton, 881 F. Supp. 468 (D. Colo. 1995).

**10-3-904.5. Emergency cease-and-desist orders - issuance.** (1) The commissioner may issue an emergency cease-and-desist order ex parte if:

(a) The commissioner believes that an unauthorized person is engaging in the business of insurance in violation of the provisions of section 10-3-105 or 10-3-903 or is in violation of a rule promulgated by the commissioner; and

(b) It appears to the commissioner that the alleged conduct is fraudulent, creates an immediate danger to the public safety, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

(2) For purposes of subsection (1) of this section, "unauthorized person" means any individual, corporation, association, partnership, or other natural or artificial person that directly or indirectly engages in the transaction of insurance business as described in section 10-3-903, except as such business may be engaged in in accordance with specific authorization in this title.

(3) Upon making a determination under subsection (1) of this section that an emergency cease-and-desist order should be issued, the commissioner shall serve on the person who is the subject of the order, by registered or certified mail, return receipt requested, at



such person's last known address, an order that contains a statement of the charges and requires such person to immediately cease and desist from the acts, methods, or practices stated in the order.

(4) The division of insurance shall promulgate reasonable rules necessary to carry out the provisions of this section and sections 10-3-904.6 and 10-3-904.7. Such rules shall include, to the extent possible, provisions requiring uniformity with respect to the procedures of this state and other states, the United States, and the national association of insurance commissioners.

**Source: L. 93:** Entire section added, p. 334, § 1, effective July 1.

**10-3-904.6. Emergency cease-and-desist orders - hearings - judicial review - violations.** (1) Any person who is the subject of an emergency cease-and-desist order may contest such order by requesting an immediate hearing before the commissioner, pursuant to section 24-4-105 (12), C.R.S., at which such person shall have the opportunity to show cause why the order should not be affirmed or upheld. Any immediate hearing requested by a person against whom an emergency cease-and-desist order has been issued pursuant to the provisions of this section shall be held in accordance with the requirements of article 4 of title 24, C.R.S. The commissioner shall have all of the powers provided in such article for the party conducting the hearing.

(2) Upon good cause shown the commissioner shall permit any person to intervene, appear, and be heard at the hearing, either in person or through counsel.

(3) Following the hearing the commissioner shall affirm, modify, or set aside, in whole or in part, the emergency cease-and-desist order.

(4) Any person adversely affected by the commissioner's decision may appeal such decision by filing an action for judicial review in the court of appeals pursuant to the provisions of section 24-4-106 (11), C.R.S. Any appeal made pursuant to the provisions of this subsection (4) shall not operate to stay or vacate a decision or order of the commissioner unless the court issues an order that specifically stays or vacates the order or decision. The commissioner may recover reasonable attorney fees if judicial action is necessary to enforce an order made pursuant to section 10-3-904.5.

(5) The commissioner shall be responsible for determining whether an emergency cease-and-desist order has been violated and may conduct a hearing pursuant to the procedures in section 24-4-105, C.R.S., to assist in making such determination. If the commissioner determines that a violation has occurred, notice of a hearing shall be mailed by the commissioner to the alleged violator's last known address. Such notice shall contain the time, date, and place of the hearing to be held for the purpose of eliciting further information. Hearings shall not be held before the twenty-first day after the date the notice is sent. The notice shall contain a statement of the facts or conduct alleged to be in violation of the emergency cease-and-desist order. If after a hearing the commissioner determines that an emergency cease-and-desist order has been violated the commissioner may:

(a) Impose a civil penalty of twenty-five thousand dollars for each act of violation;

(b) Direct the person against whom the order was issued to make complete restitution, in the form and amount and within the period determined by the commissioner, to all state residents, insureds, and entities operating in this state that were damaged by the violation or failure to comply; or

(c) Impose the penalty described in paragraph (a) of this subsection (5) and direct restitution pursuant to the provisions of paragraph (b) of this subsection (5).

(6) Any person adversely affected by an order issued by the commissioner pursuant to subsection (5) of this section may appeal such order by commencing an action for judicial review in the court of appeals pursuant to section 24-4-106 (11), C.R.S. Any such action shall be commenced no later than the twentieth day after the date of the order. The division may recover reasonable attorney fees if judicial action is necessary for enforcement of the commissioner's order.

**Source: L. 93:** Entire section added, p. 334, § 1, effective July 1.

**10-3-904.7. Failure to pay penalties or restitution.** (1) If a person fails to pay a penalty or make complete restitution as directed by the commissioner under section 10-3-904.6 (5) (a) or (5) (b), the commissioner may:

- (a) Refer the matter to the attorney general for enforcement; or
- (b) Cancel or revoke any permit, license, certificate of authority, certificate, registration, or other authorization issued to such person.

**Source: L. 93:** Entire section added, p. 334, § 1, effective July 1.

**10-3-905. Service of process upon unauthorized company.** (1) Any act of entering into a contract of insurance as an insurer, or transacting insurance business in this state, as such term is defined by section 10-3-903, by an unauthorized foreign or alien company is equivalent to and constitutes an appointment by such company of the commissioner to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of this part 9, or any action which may arise under the terms of this part 9, and the performance of one or more of such acts is signification of its agreement that any such process against it which is so served is of the same legal force and validity as if served upon the company.

(2) (a) Service of such process shall be made by delivering and leaving with the commissioner two copies thereof and the payment to the commissioner of a fee of ten dollars. The commissioner shall promptly mail by certified mail one of the copies of such process to such company at its last known principal place of business and shall keep a record of all process so served upon the commissioner. Such process is sufficient service upon such company if notice of such service and a copy of the process are, within ten days thereafter, sent by certified mail, by or on behalf of the commissioner, to such company at its last-known principal place of business, and the return receipt of the company or, in the event the company refuses to accept such certified mail, the certified mail with its refusal thereon and the affidavit of compliance herewith by or on behalf of the commissioner is filed with the clerk of the court in which such action or proceeding is pending. The date of filing of the return receipt or refusal and affidavit of compliance constitutes the effective date of service and sufficient proof thereof.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (2), the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(3) The court in any action or proceeding in which service is made in the manner provided in subsection (2) of this section may, in its discretion, order such postponement as may be necessary to afford such company reasonable opportunity to defend such action or proceeding.

(4) Nothing in this section is to be construed to prevent an unauthorized foreign or alien company from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsection (2) of this section on the ground that such unauthorized company has not done any of the acts referred to in section 10-3-903.

(5) No judgment by default shall be entered in any such action or proceeding until the expiration of thirty days from the date of the filing of the affidavit of compliance.

(6) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon any company in any other manner permitted by law.

**Source: L. 67:** p. 870, § 4. **C.R.S. 1963:** § 72-25-4. **L. 71:** p. 731, § 1. **L. 86:** (2) amended, p. 555, § 5, effective July 1. **L. 89:** (2) amended, p. 437, § 7, effective July 1. **L. 98:** (2) amended, p. 1326, § 27, effective June 1.



**10-3-906. Validity of insurance contracts - liability under insurance contract.**

(1) The failure of a company transacting insurance business in Colorado to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action in any court of this state.

(2) In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is also liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

**Source:** L. 67: p. 870, § 5. C.R.S. 1963: § 72-25-5.

**10-3-907. Investigation and disclosure of insurance contracts.** (1) Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer, the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid, and the name and address of the person assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

(2) Every person who, for thirty days after such written order pursuant to subsection (1) of this section, neglects to comply with the requirements of such order or who willfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit fifty dollars, and an additional fifty dollars for each day of neglect after expiration of said thirty days.

**Source:** L. 67: p. 871, § 6. C.R.S. 1963: § 72-25-6.

**10-3-908. Reporting of unauthorized insurance.** (1) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance business in this state.

(2) Every person acting in the capacity of insurance adviser, counselor, or analyst shall report to the commissioner every insurance policy or contract covering a subject of insurance in this state which has been entered into by an insurer not authorized to transact such insurance business in this state.

(3) This section does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

**Source:** L. 67: p. 871, § 7. C.R.S. 1963: § 72-25-7.

**10-3-909. Unauthorized insurance premium tax.** (1) Except as to premiums that are subject to a federal premium, excise, or stamp tax equal to or in excess of two and one-fourth percent of net premiums, and except as to premiums on independently procured insurance on which tax has been paid pursuant to section 10-3-209, 10-5-111, or 10-5-111.5, every insured under a contract procured from an unauthorized insurer shall pay to the division of insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax of two and one-quarter percent of net premiums charged for the insurance. Such insurance on subjects resident, located, or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, is deemed to be insurance procured, continued, or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the

time stated, the tax is increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date the payment was due to the date paid.

(2) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state.

(3) Proration of premium taxes due from an industrial insured under a contract procured from an unauthorized insurer having property in states other than Colorado shall be determined by rules and regulations promulgated by the commissioner using the following criteria where applicable:

- (a) Percentage of physical assets in Colorado;
- (b) Percentage of employee payroll in Colorado;
- (c) Percentage of sales in Colorado;
- (d) Percentage of taxable income reportable in Colorado.

**Source:** L. 67: p. 871, § 8. C.R.S. 1963: § 72-25-8. L. 2012: (1) amended, (HB 12-1215), ch. 104, p. 354, § 6, effective August 8.

**10-3-910. Application of this part 9.** (1) Other than section 10-3-909, this part 9 shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds nor to any contract of insurance issued to any one or more industrial insureds.

(2) For purposes of this section, an “industrial insured” is:

(a) An insured who procures the insurance of any risk other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant who does not receive a commission or compensation for placing the risk; and

(b) An insured whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars; and

(c) An insured having at least one hundred full-time employees.

(3) This part 9 shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption is conditioned upon any such company complying with the following requirements:

(a) Payment of an annual registration fee of five thousand dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(b) Filing a copy of any policy or contract issued to Colorado residents with the commissioner;

(c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested with the commissioner; and

(d) Providing, in such form as may be acceptable to the commissioner, for the appointment of the commissioner as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Colorado citizen, and process so served against such company shall have the same force and validity as if served upon the company.



**Source:** L. 67: p. 872, § 9. C.R.S. 1963: § 72-25-9. L. 95: (2) amended, p. 497, § 19, effective May 16. L. 98: (3)(a) amended, p. 1326, § 28, effective June 1.

## PART 10

### UNAUTHORIZED INSURERS PROCESS ACT

**10-3-1001. Short title.** This part 10 shall be known and may be cited as the “Unauthorized Insurers Process Act”.

**Source:** L. 55: p. 478, § 6. CRS 53: § 72-19-5. C.R.S. 1963: § 72-18-5.

**10-3-1002. Legislative declaration.** The purpose of this part 10 is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The general assembly declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the general assembly provides in this part 10 a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this part 10, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

**Source:** L. 55: p. 475, § 1. CRS 53: § 72-19-1. C.R.S. 1963: § 72-18-1.

**10-3-1003. Service of process upon unauthorized insurer.** (1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; the solicitation of applications for such contracts; the collection of premiums, membership fees, assessments, or other considerations for such contracts; or any other transaction of insurance business, is equivalent to and constitutes an appointment by such insurer of the commissioner and his successor in office to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance; and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process shall be made by delivering to and leaving with the commissioner or some person in apparent charge of his office two copies thereof and the payment to him of ten dollars which shall be taxed as part of costs of the proceeding. The commissioner shall forthwith mail by certified mail one of the copies of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him. Such service of process is sufficient, if notice of such service and a copy of the process are sent within ten days thereafter by certified mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and if the defendant's receipt or receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) Service of process in any such action, suit, or proceeding shall, in addition to the manner provided in subsection (2) of this section, be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, or making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if a copy of such process is sent within ten days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and if the defendant's receipt or the receipt issued by the postoffice with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(4) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty days from date of the filing of the affidavit of compliance.

(5) Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner permitted by law.

**Source:** L. 55: p. 476, § 2. CRS 53: § 72-19-2. C.R.S. 1963: § 72-18-2. L. 86: (2) amended, p. 555, § 6, effective July 1. L. 89: (2) amended, p. 437, § 8, effective July 1.

**10-3-1004. Defense of action by unauthorized insurer.** (1) Before any unauthorized foreign or alien insurer files or causes to be filed any pleading in any action, suit, or proceeding instituted against it, such unauthorized insurer shall either deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action, or procure a certificate of authority to transact the business of insurance in this state, unless one or more of the following is applicable:

(a) The insurer makes a showing satisfactory to the court and the commissioner that there are, in this state or in another state, cash, securities, bond, or other assets sufficient and available to secure the payment of any final judgment which may be rendered in the action, suit, or proceeding or that the insurance was placed lawfully in the jurisdiction in which the transaction took place and which was not an unlawful placement under the laws of this state;

(b) At the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is listed on the eligible nonadmitted insurers list prepared by the commissioner pursuant to subsection (1) of section 10-5-108;

(c) With respect to a contract of reinsurance, the reinsurer has complied with the provisions of this title necessary to permit the ceding insurer to take credit on its financial statement for the reinsurance pursuant to subsections (5) and (6) of section 10-3-118.

(1.5) If an insurer or reinsurer asserts an exemption under paragraph (a), (b), or (c) of subsection (1) of this section, such insurer or reinsurer shall notify the court of the basis on which the exemption is sought and shall file a copy of the assertion with the commissioner of insurance.

(2) The court, in any action, suit, or proceeding in which service is made in the manner provided in section 10-3-1003 (2) or (3), may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in section 10-3-1003 (2) or (3) on the ground either that such unauthorized insurer has not done any of the acts enumerated in section 10-3-1003 (1) or that the person on whom service was made pursuant to section 10-3-1003 (3) was not doing any of the acts therein enumerated.



**Source:** L. 55: p. 477, § 3. **CRS 53:** § 72-19-3. **C.R.S. 1963:** § 72-18-3. **L. 97:** (1) amended and (1.5) added, p. 531, § 5, effective April 24. **L. 2012:** (1)(b) amended, (HB 12-1215), ch. 104, p. 355, § 8, effective August 8.

**10-3-1005. Attorney fees.** In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action is deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

**Source:** L. 55: p. 478, § 4. **CRS 53:** § 72-19-4. **C.R.S. 1963:** § 72-18-4.

#### ANNOTATION

**For section to apply, policy must be issued or delivered in Colorado.** Despite the fact that defendant, an out of state insurance company, was not authorized to do business in Colorado at the time this suit was commenced, it is clear that

this statute does not apply where the policy was neither issued nor delivered in this state. *Iowa State Travelers Mut. Assurance Co. v. Brown*, 29 Colo. App. 458, 485 P.2d 910 (1971).

### PART 11

#### UNFAIR COMPETITION - DECEPTIVE PRACTICES

**Editor's note:** This part 11 was numbered as article 14 of chapter 72, C.R.S. 1963. The substantive provisions of this part 11 were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 11 prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

**Law reviews:** For article, "Insurance Bad Faith in Colorado", see 14 Colo. Law. 1157 (1985); for article, "The Showpiece Homes Decision: From Caveat Emptor to Insurer Beware?", see 31 Colo. Law. 73 (April 2002).

**10-3-1101. Legislative declaration.** The purpose of this part 11 is to regulate trade practices in the business of insurance by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices, and by prohibiting the trade practices so defined or determined. No rules or regulations shall be promulgated to adversely affect free and open competition in the sale of insurance.

**Source:** L. 73: R&RE, p. 857, § 1. **C.R.S. 1963:** § 72-14-1.

#### ANNOTATION

The phrase "providing for the determination of all such practices" cannot reasonably be construed as an intent by the general assembly to exempt the insurance industry from other Colorado statutes. The phrase can only mean all such practices in the regulatory context since the purpose of the act is the com-

prehensive regulation of insurance trade practices. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

While this act provides for the general governance of the insurance industry, it does not encompass redress for any losses sustained pursuant to an insurance company's negli-

**gence, default, or tort.** As a result, other statutes may also apply in order for private parties to obtain relief. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

**A private cause of action by an insured against an insurer under the Colorado Consumer Protection Act is not preempted by this act.** *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

**For discussion of tort of "bad faith breach of insurance contract",** see *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), *aff'd*, 691 P.2d 1138 (Colo. 1984).

**A third-party administrator owes a duty of good faith to an insured when a special relationship exists between the third-party administrator and the insured.** A special relationship is created when the administrator has primary control over benefit determinations; assumes some of the insurance risk of loss; undertakes many of the obligations and risks of an insurer; and has the power, motive, and opportunity to act unscrupulously in the investigation and servicing of the insurance claims. To establish a breach of this duty of good faith, the plaintiff must establish that the third-party administrator's conduct was unreasonable and that the administrator knew its conduct was unreasonable or acted in a reckless disregard of

whether its conduct was unreasonable. *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462 (Colo. 2003).

**Admission of attorney litigation conduct as evidence in bad faith insurance claim.** There are substantial concerns about the relevancy, probative value, and prejudicial impact of evidence of attorney litigation conduct when presented as evidence of a bad faith claim. Such evidence may be admissible in some circumstances. The appropriate test must recognize the importance of those concerns in evaluating whether evidence of attorney litigation conduct is admissible as part of a bad faith claim. *Parsons v. Allstate Ins. Co.*, 165 P.3d 809 (Colo. App. 2006).

**Test to determine admissibility of attorney litigation conduct.** Evidence of attorney litigation conduct is admissible as part of a bad faith insurance claim if the risks of unfair prejudice, confusion of the issues, or misleading the jury, and considerations of undue delay, waste of time, or presentation of unnecessary cumulative evidence are substantially outweighed by the probative value of the evidence. *Parsons v. Allstate Ins. Co.*, 165 P.3d 809 (Colo. App. 2006).

**Applied** in *Augustin v. Barnes*, 41 Colo. App. 533, 592 P.2d 9 (1978), *aff'd* in part and *rev'd* in part, 626 P.2d 625 (Colo. 1981).

**10-3-1102. Definitions.** As used in this part 11, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of insurance.

(2) "Insurance policy" or "insurance contract" means any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

(2.5) Repealed.

(3) "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, nonadmitted insurer, fraternal benefit society, and other legal entities engaged in the insurance business, including agents, limited insurance representatives, agencies, brokers, surplus line brokers, and adjusters. Such term shall also include medical service plans and hospital service plans regulated under parts 1 and 3 of article 16 of this title and health maintenance organizations regulated under parts 1 and 4 of article 16 of this title. Such plans and organizations shall be deemed to be engaged in the business of insurance for purposes of this part 11 only.

**Source:** **L. 73:** R&RE, p. 857, § 1. **C.R.S. 1963:** § 72-14-2. **L. 78:** (2.5) added, p. 293, § 1, effective July 1. **L. 81:** (2.5) repealed, p. 577, § 5, effective June 4. **L. 84:** (3) amended, p. 331, § 1, effective July 1. **L. 87:** (3) amended, p. 425, § 1, effective May 1. **L. 92:** (3) amended, p. 1723, § 4, effective July 1. **L. 95:** (3) amended, p. 491, § 5, effective May 16.

#### ANNOTATION

**Definition of "insurance policy" or "insurance contract" includes** any contract of suretyship. *Brighton Sch. Dist. 27J v. Transamerica*

*Premier Ins. Co.*, 923 P.2d 328 (Colo. App. 1996), *aff'd*, 940 P.2d 348 (Colo. 1997).

**10-3-1103. Unfair methods of competition - unfair or deceptive acts or practices - prohibited.** No person shall engage in this state in any trade practice which is defined in



this part 11 as, or determined pursuant to section 10-3-1107 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

**Source: L. 73: R&RE, p. 858, § 1. C.R.S. 1963: § 72-14-3.**

**10-3-1104. Unfair methods of competition - unfair or deceptive acts or practices.**

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or

(II) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(III) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(IV) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(V) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(VI) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or

(VII) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(VIII) Misrepresents any insurance policy as being a security; or

(IX) Misrepresentation shall not be construed where a written comparison of policies is made factually disclosing relevant features and benefits for which the policy is issued and by which an informed decision can be made;

(b) False information and advertising generally:

(I) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;

(II) Knowingly filing with the commissioner or other public official, or with any employee or agent of the division of insurance in the department of regulatory agencies, a written, false statement of material fact as to the financial condition of an insurer;

(III) Knowingly making any false entry of a material fact in any book, report, or other written statement of any insurer; knowingly omitting or failing to make a true entry of a material fact pertaining to the business of the insurer in any book, report, or other written statement of the insurer; or knowingly making any written, false material statement to the commissioner or any employee or agent of the division of insurance in the department of regulatory agencies;

(c) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical, or derogatory to the financial condition of any person, and which is calculated to injure such person;

(d) Boycott, coercion, and intimidation: Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(e) Stock operations and advisory board contracts: Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares, in any corporation, or securities, or any special or

advisory board contracts, or other contracts of any kind promising returns and profits as an inducement to insurance;

(f) (I) Unfair discrimination: Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(III) Making or permitting to be made any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics;

(IV) Making or permitting to be made any classification solely on the basis of blindness, partial blindness, or a specific physical disability unless such classification is based upon an unequal expectation of life or an expected risk of loss different than that of other individuals;

(V) Repealed.

(VI) Inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in:

(A) An application for coverage; or

(B) Any investigation conducted in connection with an application for coverage;

(VII) Using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation;

(VIII) Using sexual orientation in the underwriting process or in the determination of insurability;

(IX) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking counseling from health care professionals;

(X) Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau, but this prohibition shall not bar investigation in response to the existence of such nonspecific blood code as long as the investigation is conducted in accordance with the provisions of section 10-3-1104.5;

(XI) Reducing benefits under a health insurance policy by the addition of an exclusionary rider, unless such rider only excludes conditions which have been documented in the original underwriting application, original underwriting medical examination, or medical history of the insured, or which can be shown with clear and convincing evidence to have been caused by the medically documented excluded condition;

(XII) Denying health care coverage subject to article 16 of this title to any individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding;

(XIII) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy of sickness and accident insurance, in the benefits payable under such policy, in the terms or conditions of the policy, or in any other manner;

(XIV) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property and casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(XV) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew,



canceling, or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property;

(XVI) Terminating or modifying coverage or refusing to issue or renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; except that this subparagraph (XVI) does not:

(A) Apply to accident and health insurance sold by a casualty insurer; or

(B) Modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;

(XVII) Refusing to insure a person solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy, in which the person was the named insured. Nothing in this subparagraph (XVII) prevents an insurer from terminating an excess insurance policy based on the failure of the insured to maintain any required underlying insurance.

(g) Rebates: Except as otherwise expressly provided by law, knowingly permitting, or offering to make, or making any contract of insurance or agreement as to such contract, other than as plainly expressed in the insurance contract issued thereon, or paying, or allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or annuity or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or

(IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or

(V) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or

(VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or

(VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or

(IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or

(X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made; or

(XI) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration; or

(XII) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either of them, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or

(XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(XV) Raising as a defense or partial offset in the adjustment of a third-party claim the defense of comparative negligence as set forth in section 13-21-111, C.R.S., without conducting a reasonable investigation and developing substantial evidence in support thereof. At such time as the issue is raised under this subparagraph (XV), the insurer shall furnish to the commissioner a written statement setting forth reasons as to why a defense under the comparative negligence doctrine is valid.

(XVI) Excluding medical benefits under health care coverage subject to article 16 of this title to any covered individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding; or

(XVII) Failing to adopt and implement reasonable standards for the prompt resolution of medical payment claims.

(i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (i), "complaint" shall mean any written communication primarily expressing a grievance.

(j) Misrepresentation in insurance applications: Making false or fraudulent statements or representations on or relative to any application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any person;

(k) Requiring, directly or indirectly, any insured or claimant to submit to any polygraph test concerning any application for or any claim under any policy of insurance;

(l) Violation of or noncompliance with any insurance law in part 6 of article 4 of this title;

(m) Failure to make promptly a full refund or credit of all unearned premiums to the person entitled thereto upon termination of insurance coverage;

(n) Requiring or attempting to require or otherwise induce a health care provider, as defined in section 13-64-403 (12) (a), C.R.S., to utilize arbitration agreements with patients as a condition of providing medical malpractice insurance to such health care provider;

(o) Failure to comply with all the provisions of section 10-3-1104.5 regarding HIV testing;

(p) Violation of or noncompliance with any provision of part 13 of this article;

(q) Increasing the premiums unilaterally or decreasing the coverage benefits on renewal of a policy of insurance, increasing the premium on new policies, or failing to issue an insurance policy to barbers, cosmetologists, cosmeticians, manicurists, barbershops, or beauty salons, as regulated in article 8 of title 12, C.R.S., regardless of the type of risk insured against, based solely on the decision of the general assembly to stop mandatory inspections of the places of business of such insureds;

(r) Advising an employer to arrange for or arranging for an employee or an employee's dependent to apply to a plan developed pursuant to the "Colorado High Risk Health Insurance Act", under part 5 of article 8 of this title, for the purpose of separating such employee or employee's dependent from any group health coverage provided in connection with such employee's employment;

(s) Certifying pursuant to section 10-16-107.2 or issuing, soliciting, or using a policy form, endorsement, or rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-2-704, 10-2-801, 10-2-804, 10-3-1107, 10-3-1108, and 10-3-1109.

(t) Certifying pursuant to section 10-4-419 or issuing, soliciting, or using a claims-made policy form, endorsement, or disclosure form that does not comply with statutory



mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(u) Certifying pursuant to section 10-4-633 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(v) Failure to comply with all provisions of section 10-16-108.5 concerning fair marketing of basic and standard health benefit plans, and section 10-16-105 concerning guaranteed issue of basic and standard health benefit plans;

(w) Failure to comply with the provisions of section 10-16-201.5 concerning the renewability of individual health benefit plans;

(x) Violation of the provisions of part 8 of article 1 of title 25, C.R.S., concerning patient records;

(y) Violating any provision of the "Consumer Protection Standards Act for the Operation of Managed Care Plans", part 7 of article 16 of this title by those subject to said part 7;

(z) Willfully violating any provision of section 10-16-113.5;

(aa) Certifying pursuant to section 10-10-109 (3) or 10-10-109 (4), issuing, soliciting, or using a credit insurance policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(bb) Certifying pursuant to section 10-15-105 (1), issuing, soliciting, or using a preneed funeral contract form or a form of assignment that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(cc) Violation of the provisions of section 10-16-122 (4) concerning an unauthorized transfer of a covered person or subscriber's prescription;

(dd) Failing to comply with the provisions of section 10-4-628 (2) (a) (V) or 10-16-201 (5);

(ee) Willfully or repeatedly violating section 10-11-108 (1) (c) or (1) (d), including a willful or repeated violation through the creation or operation of an improper affiliated business arrangement;

(ff) Violation of the "Physician Designation Disclosure Act", article 38 of title 25, C.R.S.;

(gg) Violation of section 10-16-705 (6.5) or (10.5);

(hh) Unfair compensation practices: Basing the compensation of claims employees or contracted claims personnel, including compensation in the form of performance bonuses or incentives, on any of the following:

(I) The number of policies canceled;

(II) The number of times coverage is denied;

(III) The use of a quota limiting or restricting the number or volume of claims; or

(IV) The use of an arbitrary quota or cap limiting or restricting the amount of claims payments without due consideration of the merits of the claim;

(ii) Violation of section 8-43-401.5, C.R.S.;

(jj) Violation of part 6 of article 43 of title 8, C.R.S.;

(kk) Violation of section 10-7-703 of the "Insurable Interest Act", part 7 of article 7 of this title;

(ll) Engaging in stranger originated life insurance;

(mm) Paying a fee or rebate or giving or promising anything of value to a jailer, peace officer, clerk, deputy clerk, an employee of a court, district attorney or district attorney's employees, or a person who has power to arrest or to hold a person in custody as a result of writing a bail bond;

(nn) Unless the indemnitor consents in writing otherwise, failure to post a bail bond within twenty-four hours after receipt of full payment or a signed contract for payment, and if the bail bond is not posted within twenty-four hours after receipt of full payment or a

signed contract for payment, failure to refund all moneys received, release all liens, and return all collateral within seven days after receipt of good funds;

(oo) Failure to report, preserve without use, retain separately, or return after payment in full, collateral taken as security on any bail bond to the principal, indemnitor, or depositor of the collateral;

(pp) Soliciting bail bond business in or about any place where prisoners are confined, arraigned, or in custody; or

(qq) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond.

(2) Nothing in paragraph (f) or (g) of subsection (1) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, if any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(c) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(d) Requests by a person that an applicant or insured take an HIV related test when such request has been prompted by either the health history or current condition of the applicant or insured or by threshold coverage amounts which are applied to all persons within the risk class, as long as such test is conducted in accordance with the provisions of section 10-3-1104.5.

(3) Repealed.

(4) The following is defined as an unfair practice in the business of insurance: For an insurer to deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate a motor vehicle insurance policy, to restrict motor vehicle insurance coverage on any person, or to add any surcharge or rating factor to a premium of a motor vehicle insurance policy solely because of:

(a) A conviction under section 12-47-901 (1) (b), C.R.S., or section 18-13-122 (2), C.R.S., or any counterpart municipal charter or ordinance offense or because of any driver's license revocation resulting from such conviction. This paragraph (a) includes, but is not limited to, a driver's license revocation imposed under section 42-2-125 (1) (m), C.R.S.

(b) The licensee's inability to operate a motor vehicle due to physical incompetence if the licensee obtains an affidavit from a rehabilitation provider or licensed physician acceptable to the department of revenue.

(5) It shall not be an unfair practice in the business of insurance for an insurer to pay an assignee if the insurer believes in good faith that the claim is subject to a written assignment from the insured. The insurer shall remain responsible to the insured for such amounts pursuant to the applicable policy terms in the event the person paid did not hold a written assignment and did not provide services or goods to the insured at the insured's request.

**Source:** L. 73: R&RE, p. 858, § 1. C.R.S. 1963: § 72-14-4. L. 75: (1)(f)(III) added, p. 341, § 1, effective July 1. L. 78: (1)(f)(IV) added, p. 295, § 1, effective March 21; (3) added, p. 293, § 2, effective March 24. L. 79: IP(1)(h) amended and (1)(l) added, p. 359, § 5, effective June 22; (1)(h)(XV) added, p. 383, § 1, effective July 1. L. 80: (1)(f)(V) added, p. 751, § 2, effective April 10. L. 81: (3) repealed, p. 577, § 5, effective June 4. L. 88: (1)(m) and (1)(n) added, pp. 340, 625, §§ 3, 4, effective July 1. L. 89: (1)(f)(VI) to (1)(f)(X), (1)(o), and (2)(d) added, pp. 448, 449, §§ 2-4, effective April 12; (1)(p) added p. 451, § 2, effective July 1. L. 90: (1)(q) added, p. 770, § 29, effective July 1. L. 92: (1)(r) added, p. 1503, § 1, effective April 16; (1)(t) and (1)(u) added, p. 1555, § 52,



effective May 20; (1)(f)(XI) added, p. 1750, § 3, effective May 29; (1)(s) added, p. 1744, § 3, effective June 2. **L. 93:** (1)(s) amended, p. 1390, § 6, effective January 1, 1995. **L. 94:** (1)(v) added, p. 1920, § 13, effective July 1. **L. 96:** (1)(w) added, p. 459, § 2, effective July 1. **L. 97:** (1)(x) added, p. 350, § 4, effective April 19; (1)(y) added, p. 1332, § 4, effective July 1; (4) added, p. 1044, § 6, effective August 6; (1)(f)(XII) and (1)(h)(XVI) added, p. 68, §§ 1, 2, effective October 1. **L. 98:** (4)(a) amended, p. 817, § 8, effective August 5. **L. 99:** (5) added, p. 312, § 2, effective August 4; (1)(z) added, p. 1056, § 3, effective June 1, 2000. **L. 2000:** (4)(b) amended, p. 1635, § 7, effective June 1; (1)(aa) and (1)(bb) added, p. 464, § 2, effective August 2. **L. 2001:** (1)(r) amended, p. 1051, § 36, effective July 1; (1)(cc) added, p. 1231, § 3, effective January 1, 2002. **L. 2002:** (1)(f)(XII) and (1)(h)(XVI) amended, p. 65, § 1, effective January 1, 2003. **L. 2003:** (1)(u) amended, p. 1571, § 4, effective July 1. **L. 2004:** (1)(l) amended, p. 902, § 21, effective May 21; (1)(h)(XVII) added, p. 1102, § 2, effective July 1. **L. 2005:** (1)(dd) added, p. 221, § 3, effective April 14. **L. 2006:** (1)(ee) added, p. 269, § 4, effective July 1. **L. 2008:** (1)(ff) added, p. 2017, § 2, effective September 1. **L. 2009:** (1)(gg) added, (HB 09-1061), ch. 197, p. 886, § 2, effective August 5. **L. 2010:** (1)(hh) added, (SB 10-076), ch. 228, p. 987, § 1, effective May 17; (1)(ii) added, (SB 10-011), ch. 302, p. 1433, § 5, effective May 27; (1)(b) amended and (1)(f)(XIII), (1)(f)(XIV), (1)(f)(XV), (1)(f)(XVI), and (1)(f)(XVII) added, (HB 10-1220), ch. 197, p. 851, §§ 6, 7, effective July 1; (1)(jj) added, (SB 10-178), ch. 290, p. 1350, § 2, effective July 1. **L. 2011:** (1)(kk) and (1)(ll) added, (SB 11-182), ch. 227, p. 976, § 2, effective May 27. **L. 2012:** (1)(mm), (1)(nn), (1)(oo), (1)(pp), and (1)(qq) added, (HB 12-1266), ch. 280, p. 1507, § 37, effective July 1.

**Editor's note:** (1) Subsection (1)(f)(V) provided for the repeal of subsection (1)(f)(V), effective July 1, 1987. (See L. 1980, p. 751.)

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding subsections (1)(mm), (1)(nn), (1)(oo), (1)(pp), and (1)(qq) applies to offenses committed and applications submitted on or after July 1, 2012.

**Cross references:** For the legislative declaration contained in the 2000 act enacting subsections (1)(aa) and (1)(bb), see section 1 of chapter 135, Session Laws of Colorado 2000.

## ANNOTATION

**Law reviews.** For article, "The Professional Liability Insurer's Duty to Defend — Part I", see 15 Colo. Law. 799 (1986). For comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990).

**For discussion of tort of "bad faith breach of insurance contract",** see *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), aff'd, 691 P.2d 1138 (Colo. 1984).

**An insurer has a contractual duty to investigate third-party claims** in the ordinary course of business to determine whether the third-party's claims are within an insured's coverage and to resolve them. *Lazar v. Riggs*, 79 P.3d 105 (Colo. 2003).

**A third-party administrator owes a duty of good faith to an insured when a special relationship exists between the third-party administrator and the insured.** A special relationship is created when the administrator has primary control over benefit determinations; assumes some of the insurance risk of loss; undertakes many of the obligations and risks of an

insurer; and has the power, motive, and opportunity to act unscrupulously in the investigation and servicing of the insurance claims. To establish a breach of this duty of good faith, the plaintiff must establish that the third-party administrator's conduct was unreasonable and that the administrator knew its conduct was unreasonable or acted in a reckless disregard of whether its conduct was unreasonable. *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462 (Colo. 2003).

**Subsection (1)(h) may not serve as the sole basis for a civil action** instituted by private citizens allegedly aggrieved by the conduct of their insurers. *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), aff'd, 691 P.2d 1138 (Colo. 1984); *Appel v. Sentry Life Ins. Co.*, 701 P.2d 634 (Colo. App. 1985), aff'd, 739 P.2d 1380 (Colo. 1987); *Simmons v. Prudential Ins. Co.*, 641 F. Supp. 675 (D. Colo. 1986).

**The plain meaning of subsection (1)(h)(I) is that insurers are prohibited from making misrepresentations about facts or coverage.** There is no indication in the language of subsection (1)(h)(I) that the general assembly intended to impose upon insurers the affirmative duty of

informing their insureds when the statute of limitations on a claim will run. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849 (Colo. App. 2007).

**Subsection (1)(h)(VI) cannot be used as a basis for private cause of action.** Sections 10-3-1101 through 10-3-1112 provide for state regulation of insurance companies and do not create a private cause of action. *Schnacker v. State Farm Mut. Auto. Ins. Co.*, 843 P.2d. 102 (Colo. App. 1992).

**Award of attorney fees** not authorized by language of subsection (1)(h)(VII). *Cont'l W. Ins. Co. v. Heritage Estates Mut. Hous. Ass'n*, 77 P.3d 911 (Colo. App. 2003).

**Duties of agent selling replacement insurance.** An agent selling life insurance must determine whether new insurance will replace existing insurance and, if so, the agent must furnish the applicant with a "disclosure statement" detailing the costs, advantages, and disadvantages of the proposed replacement insurance, and a notice warning applicants about problems that may arise from replacement. *Augustin v. Barnes*, 41 Colo. App. 533, 592 P.2d 9 (1978), *aff'd* in part and *rev'd* in part, 626 P.2d 625 (Colo. 1981).

**Insurance agents have standing to assert alleged violation of insured's constitutional rights** when compliance with a regulation would result directly in the violation of the insured's right to privacy in those cases where the insured has requested confidentiality. *Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

**Preemption of insurance provisions under the federal "Employee Retirement Income Security Act".** ERISA does not preempt persons from state laws which regulate insurance, banking, and securities. The test for whether a state law falls under the "business of insurance" is: (1) Whether the state law has the effect of transferring or spreading a policy holder's risk; (2) whether the state law is an integral part of the policy relationship between the insurer and the insured; and (3) whether the state law is limited to entities within the insurance industry. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

Subsection (1)(h) relating to unfair claim settlement practices meets only the third requirement of the test and therefore does not regulate insurance. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

**10-3-1104.5. HIV testing - legislative declaration - definitions - requirements for testing - limitations on disclosure of test results.** (1) The general assembly declares that a balance must be maintained between the need for information by those conducting the business of insurance and the public's need for fairness in practices for testing for the human immunodeficiency virus, including the need to minimize intrusion into an individual's privacy and the need to limit disclosure of the results of such testing.

(2) As used in this section, unless the context otherwise requires:

(a) "AIDS" means acquired immunodeficiency syndrome.

This section does not "regulate" insurance because it fails to satisfy the first two criteria of the test. *Kelley v. Sears, Roebuck & Co.*, 882 F.2d 453 (10th Cir. 1989).

**"Misrepresentation" as used in this section was demonstrated** by company's failure to warn its insureds of impending withdrawal from market at time of change of policy form, failure to implement promised gradual plan of withdrawal, ambiguous price term in offer of "tail coverage", false assurances of stability, and failure to make offered "tail coverage" available to those who desired it. *Hartford Fire Ins. Co. v. Colo. Div. of Ins.*, 824 P.2d 76 (Colo. App. 1991).

**Misstatements by agent of insurance company** as to the policy's eligibility terms and the scope and types of coverage involved constitute actionable misrepresentation under subsection (1)(a)(I). *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

**Selling agent who misstates terms of insurance policy makes a misrepresentation** of the terms, benefits, and conditions of such policy. *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

**Suggestion by insurance company's attorney that insured submit to a polygraph examination** and settlement proposal by insurance company's attorney that would require insured to drop other claims violated section. *People v. McClung*, 953 P.2d 1282 (Colo. 1998).

**A violation of this section does not constitute a per se violation of the Colorado Consumer Protection Act**, part 1 of article 1 of title 6. This section does not create a private right of action against an insurer for a deceptive trade practice. *Coors v. Sec. Life of Denver Ins. Co.*, 91 P.3d 393 (Colo. App. 2003), *aff'd* by operation of law, 112 P.3d 59 (Colo. 2005).

An insurer engages in an unfair method of competition and an unfair or deceptive trade practice when: It adopts a false or misleading scheme to induce an insured to accept a unilateral change to the insured's express insurance policy; denies the insured a refund for the insured's charges; and charging the insured a termination fee. Such unfair method of competition or unfair or deceptive trade practice is actionable by the insurance commissioner. *Coors v. Sec. Life of Denver Ins. Co.*, 91 P.3d 393 (Colo. App. 2003), *aff'd* by operation of law, 112 P.3d 59 (Colo. 2005).



(b) "Applicant" means the individual proposed for coverage.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(e) "HIV related test" means any laboratory test or series of tests for any virus, antibody, antigen, or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

(f) "Person" means any individual, corporation, association, partnership, fraternal benefit society, or any other entity engaged in the insurance business, except insurance agents and brokers. Such term shall also include medical service plans and hospital service plans regulated under parts 1 and 3 of article 16 of this title and health maintenance organizations regulated under parts 1 and 4 of article 16 of this title. Such plans and health maintenance organizations shall be deemed to be engaged in the business of insurance for purposes of this section.

(3) No person shall request or require that an applicant submit to an HIV related test unless that person:

(a) Obtains the applicant's prior written informed consent; and

(b) Reveals, in the written consent form, and explains the use of the HIV related test result to the applicant and entities to whom test results may be disclosed pursuant to paragraphs (a) and (b) of subsection (4) of this section; and

(c) Provides the applicant with:

(I) Printed material prior to testing which contains factual information describing AIDS; its causes, symptoms, and transmission; and the tests used to detect HIV infection and what a person should do if the result of the HIV related test is positive; or

(II) Information on how to obtain relevant counseling from a qualified practitioner having extensive training and experience in addressing the fears, questions, and concerns of persons tested for HIV infection; and

(d) Administers the HIV related test based upon the following test protocol, as a minimum:

(I) Two positive ELISA tests and a western blot test with bands present at p24, p31, and either gp41 or gp160; or

(II) An equally reliable screening or confirmatory test protocol designated by the commissioner, with the approval of the department of public health and environment; and

(e) Discloses the results of testing in the manner prescribed by subsection (4) of this section.

(4) (a) On the basis of the applicant's written informed consent as specified in subsection (3) of this section, a person may disclose an individual applicant's HIV related test results to its reinsurers or to those contractually retained medical personnel, laboratories, and insurance affiliates, excluding agents and brokers, which are involved in underwriting decisions regarding the individual's application if disclosure is necessary to make underwriting decisions regarding such application.

(b) Other than the disclosures permitted by paragraph (a) of this subsection (4), no person shall disclose HIV related test results which identify the individual applicant with the test results obtained to anyone without first obtaining separate written informed consent for such disclosure from the applicant; except that, if the result of the HIV related test of an applicant is positive or indeterminate, such person may report the test finding to the medical information bureau but only if a nonspecific blood test result code is used which does not indicate that the applicant was tested for HIV infection.

(c) Nothing in this subsection (4) shall be construed to prohibit reporting as required by the provisions of sections 25-4-1402, 25-4-1403, and 25-4-1405 (8), C.R.S.

(5) A person shall notify the applicant in writing of an adverse underwriting decision based upon the results of such applicant's blood test but shall not disclose the specific results of such blood test to such applicant. The person shall also inform the applicant that the results of the blood test will be sent to the physician designated by the applicant at the time of application and that such physician should be contacted for information regarding the HIV related test. If a physician was not designated at the time of application, the person

shall request that the applicant name a physician to whom a copy of the blood test can be sent.

(6) Notwithstanding any other provisions to the contrary, any person who fails to comply with all the provisions of this section regarding the disclosure of HIV related test results is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than six months nor more than twenty-four months, or both such fine and imprisonment.

**Source:** L. 89: Entire section added, p. 446, § 1, effective April 12. L. 92: (2)(f) amended, p. 1724, § 5, effective July 1. L. 94: (3)(d)(II) amended, p. 2723, § 318, effective July 1.

**10-3-1104.6. Genetic information - limitations on disclosure of information - liability - definitions - legislative declaration.** (1) The general assembly hereby finds and determines that recent advances in genetic science have led to improvements in the diagnosis, treatment, and understanding of a significant number of human diseases. The general assembly further declares that:

(a) Genetic information is the unique property of the individual to whom the information pertains;

(b) Any information concerning an individual obtained through the use of genetic services may be subject to abuses if disclosed to unauthorized third parties without the willing consent of the individual to whom the information pertains;

(c) To protect individual privacy and to preserve individual autonomy with regard to the individual's genetic information, it is appropriate to limit the use and availability of genetic information;

(d) The intent of this section is to prevent genetic information from being used to deny access to health care insurance or medicare supplement insurance coverage.

(2) For the purposes of this section:

(a) "Entity" means any sickness and accident insurance company, health maintenance organization, nonprofit hospital, medical-surgical and health service corporation, or other entity that provides health care insurance or medicare supplement insurance coverage and is subject to the jurisdiction of the commissioner of insurance.

(b) "Family member" means an individual who is related to another individual by blood, adoption, or marriage within the first, second, third, or fourth degree.

(c) (I) "Genetic information" means information about an individual's genetic test, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual. "Genetic information" includes any request for, or receipt of, genetic services with respect to an individual, or participation by an individual or the family member of an individual in clinical research that includes genetic services.

(II) With regard to an individual who is pregnant, "genetic information" includes genetic information of the fetus carried by the pregnant individual. With regard to an individual or family member using reproductive technology, "genetic information" includes genetic information of any embryo legally held by an individual or family member.

(III) "Genetic information" does not include information about the sex or age of an individual.

(d) "Genetic services" means a genetic test, genetic counseling, which includes obtaining, interpreting, or assessing genetic information, or genetic education.

(e) (I) "Genetic test" means any analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

(II) "Genetic test" does not include:

(A) An analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved; or



(B) An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

(f) "Underwriting purposes" means any of the following:

(I) Rules for, or determination of, eligibility for enrollment or continued eligibility in a policy or for benefits under the policy;

(II) The computation of premium or contribution amounts under the policy;

(III) The application of any preexisting condition exclusion under the policy; and

(IV) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(3) (a) Genetic information shall be confidential and privileged. Any release, for purposes other than diagnosis, treatment, or therapy, of genetic information that identifies the person tested with the test results released requires specific written consent by the person about whom the genetic information pertains or the parent or guardian of that person.

(b) (I) Any entity that receives genetic information may not seek, use, or keep the information for any nontherapeutic purpose or for any underwriting purpose connected with the provision of health care insurance or medicare supplement insurance coverage.

(II) If an entity obtains genetic information incidental to a request or requirement for, or purchase of, other information concerning an individual, the request or requirement for, or purchase of, such information shall not be considered a violation of this paragraph (b) if it is not in violation of paragraph (a) of this subsection (3).

(c) (I) An entity shall not request or require an individual or family member of the individual to undergo a genetic test unless otherwise authorized by applicable state or federal law.

(II) Nothing in this paragraph (c) shall be construed to preclude an entity from obtaining and using the results of a genetic test in making a determination regarding payment, as defined in 45 CFR 164.501, as may be amended, and consistent with paragraphs (a) and (b) of this subsection (3).

(4) Notwithstanding the provisions of subsection (3) of this section, in the course of a criminal investigation or a criminal prosecution, and to the extent allowed under the federal or state constitution, any peace officer, district attorney, or assistant attorney general, or a designee thereof, may obtain genetic information regarding the identity of any individual who is the subject of the criminal investigation or prosecution for use exclusively in any criminal investigation or prosecution without the consent of the individual being tested.

(5) Notwithstanding the provisions of subsection (3) of this section, any research facility may use genetic information for scientific research purposes if the identity of any individual to whom the information pertains is not disclosed to any third party; except that the individual's identity may be disclosed to the individual's physician if the individual consents to the disclosure in writing.

(6) This section does not limit the authority of a court or any party to a parentage proceeding to use genetic information for purposes of determining parentage pursuant to section 13-25-126, C.R.S.

(7) This section does not limit the authority of a court or any party to a proceeding that is subject to the limitations of part 5 of article 64 of title 13, C.R.S., to use genetic information for purposes of determining the cause of damage or injury.

(8) This section does not limit the authority of the state board of parole to require any offender who is involved in a sexual assault to submit to blood tests and to retain the results of such tests on file as authorized under section 17-2-201 (5) (g), C.R.S.

(9) This section does not limit the authority granted the state department of public health and environment, the state board of health, or county, district, or municipal public health agencies pursuant to section 25-1-122, C.R.S.

(10) Any violation of this section is an unfair practice as defined in section 10-3-1104 (1), and is subject to the provisions of sections 10-3-1106 to 10-3-1113.

(11) Any individual who is injured by an entity's violation of this section may recover in a court of competent jurisdiction the following remedies:

(a) Equitable relief, which may include a retroactive order, directing the entity to provide health insurance or medicare supplement insurance coverage, whichever is appro-

prate, to the injured individual under the same terms and conditions as would have applied had the violation not occurred; and

(b) The greater of:

(I) An amount equal to any actual damages suffered by the individual as a result of the violation; or

(II) Ten thousand dollars per violation.

(12) The prevailing party in an action under this section may recover costs and reasonable attorney fees.

**Source: L. 2009:** Entire section added, (HB 09-1338), ch. 353, p. 1840, § 2, effective July 1. **L. 2010:** (9) amended, (HB 10-1422), ch. 419, p. 2066, § 14, effective August 11.

**10-3-1104.7. Genetic testing - legislative declaration - definitions - limitations on disclosure of information - liability.** (1) The general assembly hereby finds and determines that recent advances in genetic science have led to improvements in the diagnosis, treatment, and understanding of a significant number of human diseases. The general assembly further declares that:

(a) Genetic information is the unique property of the individual to whom the information pertains;

(b) Any information concerning an individual obtained through the use of genetic techniques may be subject to abuses if disclosed to unauthorized third parties without the willing consent of the individual to whom the information pertains;

(c) To protect individual privacy and to preserve individual autonomy with regard to the individual's genetic information, it is appropriate to limit the use and availability of genetic information;

(d) The intent of this section is to prevent information derived from genetic testing from being used to deny access to group disability insurance or long-term care insurance coverage.

(2) For the purposes of this section:

(a) "Entity" means any entity that provides group disability insurance or long-term care insurance coverage and is subject to the jurisdiction of the commissioner of insurance.

(b) "Genetic testing" means any laboratory test of human DNA, RNA, or chromosomes that is used to identify the presence or absence of alterations in genetic material which are associated with disease or illness. "Genetic testing" includes only such tests as are direct measures of such alterations rather than indirect manifestations thereof.

(3) (a) Information derived from genetic testing shall be confidential and privileged. Any release, for purposes other than diagnosis, treatment, or therapy, of genetic testing information that identifies the person tested with the test results released requires specific written consent by the person tested.

(b) Any entity that receives information derived from genetic testing may not seek, use, or keep the information for any nontherapeutic purpose or for any underwriting purpose connected with the provision of group disability insurance or long-term care insurance coverage.

(4) Notwithstanding the provisions of subsection (3) of this section, in the course of a criminal investigation or a criminal prosecution, and to the extent allowed under the federal or state constitution, any peace officer, district attorney, or assistant attorney general, or a designee thereof, may obtain information derived from genetic testing regarding the identity of any individual who is the subject of the criminal investigation or prosecution for use exclusively in the criminal investigation or prosecution without the consent of the individual being tested.

(5) Notwithstanding the provisions of subsection (3) of this section, any research facility may use the information derived from genetic testing for scientific research purposes so long as the identity of any individual to whom the information pertains is not disclosed to any third party; except that the individual's identity may be disclosed to the individual's physician if the individual consents to such disclosure in writing.



(6) This section does not limit the authority of a court or any party to a parentage proceeding to use information obtained from genetic testing for purposes of determining parentage pursuant to section 13-25-126, C.R.S.

(7) This section does not limit the authority of a court or any party to a proceeding that is subject to the limitations of part 5 of article 64 of title 13, C.R.S., to use information obtained from genetic testing for purposes of determining the cause of damage or injury.

(8) This section does not limit the authority of the state board of parole to require any offender who is involved in a sexual assault to submit to blood tests and to retain the results of such tests on file as authorized under section 17-2-201 (5) (g), C.R.S.

(9) This section does not limit the authority granted the state department of public health and environment, the state board of health, or local departments of health pursuant to section 25-1-122, C.R.S.

(10) Notwithstanding any provision of this section to the contrary, the only requirements that shall apply to an insurer in connection with life insurance or individual disability insurance are as follows:

(a) Except as otherwise specifically authorized or required by another section of state or federal law, an insurer shall not require the performance of or perform a genetic test without first receiving the specific, written, informed consent of the subject of the test who has the capacity to consent or, if the person subject to the test lacks the capacity to consent, of a person authorized by law to consent on behalf of the subject of the test. Written consent shall be in a form prescribed by the commissioner.

(b) The results of a genetic test performed pursuant to this subsection (10) are privileged and confidential and shall not be released to any person except as specifically authorized under applicable state or federal law.

(11) Any violation of this section is an "unfair practice", as defined in section 10-3-1104 (1), and is subject to the provisions of sections 10-3-1106 to 10-3-1113.

(12) Any individual who is injured by an entity's violation of this section may recover in a court of competent jurisdiction the following remedies:

(a) Equitable relief, which may include a retroactive order, directing the entity to provide group disability insurance or long-term care insurance coverage, whichever is appropriate, to the injured individual under the same terms and conditions as would have applied had the violation not occurred; and

(b) The greater of:

(I) An amount equal to any actual damages suffered by the individual as a result of the violation; or

(II) Ten thousand dollars per violation.

(13) The prevailing party in an action under this section may recover costs and reasonable attorney fees.

**Source:** L. 94: Entire section added, p. 1944, § 1, effective June 2; (9) amended, p. 2614, § 22, effective July 1. L. 2002: (10) and (12) amended, p. 990, § 1, effective June 1. L. 2003: (12)(b)(I) amended, p. 1982, § 7, effective May 22. L. 2009: (1)(d), (2)(a), (3)(b), and (12)(a) amended, (HB 09-1338), ch. 353, p. 1839, § 1, effective July 1.

## ANNOTATION

**Law reviews.** For article, "The Genetic Privacy Act: Proposed Model Legislation", see 24 Colo. Law. 2317 (1995).

**10-3-1104.8. Domestic abuse discrimination - prohibited.** (1) As used in this section, unless the context otherwise requires:

(a) "Domestic abuse" means the occurrence of one or more of the following acts between family members, current or former household members, or persons who are or have been involved in an intimate relationship:

(I) Committing an act of unlawful sexual behavior, as described in part 4 of article 3 of title 18, C.R.S., or otherwise intentionally, knowingly, or recklessly causing or attempting

to cause another person, including a minor, bodily injury or physical or psychological harm; or

(II) Knowingly engaging in repeated acts under circumstances that place the person toward which such acts are directed in reasonable fear of bodily injury or physical or psychological harm; or

(III) Subjecting another person to false imprisonment; or

(IV) Intentionally, knowingly, or recklessly causing or attempting to cause damage to property so as to intimidate or attempt to control the behavior of another person.

(b) "Domestic abuse related medical condition" means a medical condition sustained by a victim of domestic abuse that arises in whole or in part out of an act or pattern of domestic abuse.

(c) "Domestic abuse status" means the fact or perception that a person is or has been a victim of domestic abuse, irrespective of whether the person has sustained a domestic abuse related medical condition.

(d) "Victim of domestic abuse" means a person against whom any of the acts specified in paragraph (a) of this subsection (1) has been directed by any of the persons specified in said paragraph (a).

(2) The following are unfair methods of competition and unfair or deceptive acts or practices in the business of insurance by insurers licensed in this state, their employees, or their producers:

(a) Denying, refusing to issue, refusing to renew, refusing to reissue, canceling, or otherwise terminating an insurance policy or restricting coverage on any person solely because of that person's domestic abuse status; or

(b) Adding any surcharge or rating factor to a premium of an insurance policy solely because of an insured's domestic abuse status; or

(c) Directly or indirectly asking an insured or an insurance applicant about that person's domestic abuse status unless related to the provision of appropriate medical or mental health services to an insured as provided by the insurance contract or health maintenance organization, but said information shall not be released without specific, separate authorization from the insured; or

(d) Disclosing or transferring by insurers licensed in this state, their employees, or their producers any information relating to a person's domestic abuse status or a person's domestic abuse related medical condition as it relates to a person's family, household, social, or employment relationship with a victim of domestic abuse, except:

(I) To the extent required in the ordinary course of business and consistent with paragraph (a), (b), or (c) of this subsection (2);

(II) To the extent required for compliance with domestic abuse reporting laws or with an order of a court of competent jurisdiction; or

(III) At the written request of the commissioner for the purpose of determining the insurer's compliance with this section. This paragraph (d) shall not preclude a victim of domestic abuse from obtaining his or her records, including medical records.

(3) An insurer that takes an action that adversely affects an insured or an applicant who is a victim of domestic abuse, shall demonstrate to the applicant or the insured, upon the written request of the insured or applicant, that such action is not based solely upon the domestic abuse status of the insured or the applicant but that the action is based on underwriting criteria related to the condition, property, or claim history of the insured or the applicant and that the decision to take such action was based on sound underwriting and actuarial principles related to actual or anticipated loss experience.

(4) An insurer that complies with this section and acts in good faith shall not be held civilly liable in any cause of action that may be brought because of compliance with this section.

(5) Nothing in this section shall be construed to alter or modify any policy conditions, exclusions, or limitations that are consistent with paragraphs (a), (b), and (c) of subsection (2) of this section and are clearly stated in the contract.

(6) Nothing in this section shall be construed to establish a protected class for victims of domestic abuse.



**10-3-1105. Favored agent or insurer - coercion of debtors.** (1) No person may:

(a) Require, as a condition precedent to the lending of money, or extension of credit, or to entering into any lease transaction, or any renewal of any of them, that the person to whom such money or credit is extended, or the lessee, or the person whose obligation the creditor is to acquire or finance negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(b) Unreasonably disapprove the insurance policy provided by a borrower or lessee for the protection of the property securing the credit, or lien, or which is the subject of the lease. For the purposes of this paragraph (b), disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required; or

(c) Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. The provisions of this paragraph (c) shall not apply to the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

(2) The commissioner may investigate the affairs of any person to whom this section applies to determine whether such person has violated the provisions of this section. If a violation of this section is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this part 11.

(3) For the purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

**Source:** L. 73: R&RE, p. 861, § 1. C.R.S. 1963: § 72-14-5. L. 85: (1)(a) and (1)(b) amended, p. 302, § 13, effective May 10.

**ANNOTATION**

**Conduct held not to be unreasonable under subsection (1)(b).** Iowa Nat. Mut. Ins. Co. v. Cent. Mortg. & Inv., 708 P.2d 480 (Colo. App. 1985).

**10-3-1106. Power of commissioner.** The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this part 11.

**Source:** L. 73: R&RE, p. 861, § 1. C.R.S. 1963: § 72-14-6.

**ANNOTATION**

**Annotator's note.** Since § 10-3-1106 is similar to repealed § 72-15-5, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

**No provision is made for initiation of suit before commissioner.** This article makes no provisions for unfair competition suits to be initiated before the Colorado commissioner of insurance. Atlantic & Pac. Ins. Co. v. Combined Ins. Co. of Am., 312 F.2d 513 (10th Cir. 1962).

**Federal district courts still have unfair competition jurisdiction.** This section does not remove unfair competition suits involving insurance companies from the jurisdiction of federal district courts in Colorado. Atlantic & Pac. Ins. Co. v. Combined Ins. Co. of Am., 312 F.2d 513 (10th Cir. 1962).

**Applied** in Farmers Group, Inc. v. Trimble, 658 P.2d 1370 (Colo. App. 1982), aff'd, 691 P.2d 1138 (Colo. 1984).

**10-3-1107. Hearings.** Whenever the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition

or any unfair or deceptive act or practice, whether defined or reasonably implied in this part 11, or has violated any other provision of this title or any rule or lawful order of the commissioner and that a proceeding by the commissioner in respect thereto would be to the interest of the public, the commissioner shall proceed as provided in article 4 of title 24, C.R.S. Any final action by the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-7. L. 92: Entire section amended, p. 1556, § 53, effective May 20. L. 97: Entire section amended, p. 1077, § 3, effective July 1.

#### ANNOTATION

**Provision is made in this section only for hearings to be commenced by the commissioner,** and then apparently only in matters affecting the public generally. Atlantic & Pac. Ins.

Co. v. Combined Ins. Co. of Am., 312 F.2d 513 (10th Cir. 1962) (decided under repealed § 72-15-6, CRS 53).

**10-3-1108. Orders.** (1) If, after a hearing conducted under section 10-3-1107, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice or has violated any other provision of this title or any rule or lawful order of the commissioner, the commissioner shall reduce the findings to writing and shall issue and cause to be served on such person a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, practice, or violation, and, except in the case of an act or practice that is not a violation of any specific provision of this title or any specific rule or lawful order of the commissioner, the commissioner may, at his or her discretion, order any one or more of the following:

(a) Payment of a monetary penalty of not more than three thousand dollars for each act or violation but not to exceed an aggregate penalty of thirty thousand dollars, unless such person, being an insurer, knew or reasonably should have known he or she was in violation of this part 11, in which case the penalty shall not be more than thirty thousand dollars for each act or violation, but not to exceed an aggregate penalty of seven hundred fifty thousand dollars annually;

(b) Suspension or revocation of the person's license if he knew or reasonably should have known he was in violation of the provisions of this part 11; or

(c) Payment of a contractual claim to an insured or beneficiary pursuant to an insurance policy if the commissioner finds that the violation of this part 11 caused the failure to pay the claim, which amount shall be determined by the commissioner at the hearing based on the testimony and evidence presented. This paragraph (c) shall not apply during the pendency of any civil action seeking a declaratory judgment concerning such claims.

(2) Any order issued by the commissioner pursuant to paragraph (c) of subsection (1) of this section may be appealed to the district court, whereupon the matter shall be tried de novo by the district court.

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-8. L. 81: IP(1) amended, p. 577, § 4, effective June 4. L. 90: (1)(c) and (2) added, p. 614, §§ 1, 2, effective April 5. L. 93: (1)(a) amended, p. 393, § 2, effective July 1. L. 94: IP(1) amended, p. 1628, § 23, effective May 31; IP(1) amended, p. 1946, § 2, effective June 2. L. 97: IP(1) amended, p. 1077, § 4, effective July 1; IP(1) amended, p. 98, § 2, effective January 1, 1998. L. 2008: (1)(a) amended, p. 2172, § 3, effective August 5.

**Editor's note:** (1) Amendments to the introductory portion to subsection (1) by Senate Bill 94-58 and Senate Bill 94-206 were harmonized.

(2) Senate Bill 97-72 was superseded by and harmonized with Senate Bill 97-108, because the amendment made in Senate Bill 97-108 has the effect of including the referenced section that was added in Senate Bill 97-72.



## ANNOTATION

**Annotator's note.** Since § 10-3-1108 is similar to repealed § 72-15-7, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

**This section does not provide an exclusive remedy for unfair competition.** *Atlantic & Pac. Ins. Co. v. Combined Ins. Co. of Am.*, 312 F.2d 513 (10th Cir. 1962).

**Federal courts also can supply a remedy.** This section does not remove unfair competition

suits involving insurance companies from the jurisdiction of federal district courts in Colorado. *Atlantic & Pac. Ins. Co. v. Combined Ins. Co. of Am.*, 312 F.2d 513 (10th Cir. 1962).

**Applied** in *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), *aff'd*, 691 P.2d 1138 (Colo. 1984).

**10-3-1109. Penalty for violation of cease-and-desist orders.** (1) Any person who violates a cease-and-desist order of the commissioner issued under section 10-3-1108, and while such order is in effect, may, after notice and hearing and upon order of the commissioner, be subject, at the discretion of the commissioner, to any one or more of the following:

(a) A monetary penalty of not more than ten thousand dollars for each and every act or violation of an insurer; or a monetary penalty of not more than five hundred dollars for each and every act or violation of an individual;

(b) Suspension or revocation of such person's license.

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-9.

**10-3-1110. Rules.** (1) The commissioner may, after notice and hearing, as provided in article 4 of title 24, C.R.S., promulgate reasonable rules and regulations as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by sections 10-3-1104 and 10-3-1105.

(2) The commissioner may, after notice and hearing, as provided in article 4 of title 24, C.R.S., promulgate rules with respect to the payment of benefits under group and individual contracts of property or casualty coverage, issued by organizations authorized to do business in this state under the provisions of article 4 of this title; except that, to the extent that a provision of this subsection (2) conflicts with section 10-4-642, as enacted by senate bill 04-125, enacted at the second regular session of the sixty-fourth general assembly, the provisions of said section 10-4-642 shall govern. Such rules may establish a penalty payable to the claimant on benefit payments that are delayed more than sixty days after a valid and complete filing of the claim unless there is a reasonable dispute between the parties concerning such claim. Such penalty shall not exceed twenty dollars on claims of less than one hundred dollars or interest at a rate of eight percent annually on claims above one hundred dollars. In addition to such penalties payable to the claimant, the commissioner, after notice and hearing, may assess a civil penalty against any insurer of one hundred dollars per day for each day benefit payments are delayed more than sixty days after a valid and complete filing of the claim unless there is a reasonable dispute between the parties concerning such claim.

(3) (Deleted by amendment, L. 99, p. 1142, § 2, effective January 1, 2000.)

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-10. L. 84: Entire section amended, p. 331, § 2, effective July 1. L. 90: (2) amended, p. 614, § 3, effective April 5. L. 91: (2) amended, p. 1909, § 10, effective June 1. L. 92: (2) amended, p. 1556, § 54, effective May 20; (2) amended, p. 1724, § 6, effective July 1. L. 99: (2) and (3) amended, p. 1142, § 2, effective January 1, 2000. L. 2003: (2) amended, p. 1571, § 5, effective July 1. L. 2004: (2) amended, p. 894, § 2, effective May 21; (2) amended, p. 1102, § 3, effective July 1.

**Editor's note:** Amendments to subsection (2) by Senate Bill 92-90 and Senate Bill 92-104 were harmonized.

## ANNOTATION

**Applied** in *Augustin v. Barnes*, 41 Colo. App. 533, 592 P.2d 9 (1978), *aff'd* in part and *rev'd* in part, 626 P.2d 625 (Colo. 1981).

**10-3-1111. Provisions of part 11 additional to existing law.** The powers vested in the commissioner by this part 11 shall be additional to any other powers to enforce any monetary or other penalties or forfeitures authorized by law with respect to the methods, acts, and practices declared in this part 11 to be unfair or deceptive.

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-11.

## ANNOTATION

**Applied** in *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), *aff'd*, 691 P.2d 1138 (Colo. 1984).

**10-3-1112. Immunity from prosecution.** (1) If any person asks to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture and, notwithstanding, is directed to give such testimony or produce such evidence, he must comply with such direction; but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence pursuant thereto; and no testimony so given or evidence so produced shall be received against him upon any criminal action, investigation, or proceeding. No such individual so testifying may be exempt from prosecution or punishment for perjury in the first degree committed by him while so testifying, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury; nor may he be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law of this state.

(2) Any such individual may execute, acknowledge, and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

**Source:** L. 73: R&RE, p. 862, § 1. C.R.S. 1963: § 72-14-12.

**10-3-1113. Information to trier of fact in civil actions.** (1) In any civil action for damages founded upon contract, or tort, or both against an insurance company, the trier of fact may be instructed that the insurer owes its insured the duty of good faith and fair dealing, which duty is breached if the insurer delays or denies payment without a reasonable basis for its delay or denial.

(2) Under a policy of liability insurance, the determination of whether the insurer's delay or denial was reasonable shall be based on whether the insurer's delay or denial was negligent.

(3) Under a policy of first-party insurance, the determination of whether the insurer's delay or denial was reasonable shall be based on whether the insurer knew that its delay or denial was unreasonable or whether the insurer recklessly disregarded the fact that its delay or denial was unreasonable.



(4) In determining whether an insurer's delay or denial was reasonable, the jury may be instructed that willful conduct of the kind set forth in section 10-3-1104 (1) (h) (I) to (1) (h) (XIV) is prohibited and may be considered if the delay or denial and the claimed injury, damage, or loss was caused by or contributed to by such prohibited conduct.

**Source:** L. 87: Entire section added, p. 423, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988). For comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990). For comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990).

**Preemption of insurance provisions under the federal "Employee Retirement Income Security Act".** ERISA does not preempt persons from state laws which regulate insurance, banking, and securities. The test for whether a state law falls under the "business of insurance" is: (1) Whether the state law has the effect of transferring or spreading a policy holder's risk; (2) whether the state law is an integral part of the policy relationship between the insurer and the insured; and (3) whether the state law is limited to entities within the insurance industry. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

Subsection (1)(a) and (1)(c) meet only the third requirement of the test and therefore does not regulate insurance. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

**Arbitration under this section may bar bad faith and punitive damage claim.** Plaintiff who raised issue of unreasonable delay in arbitration was barred by collateral estoppel from asserting in court separate claims for bad faith and punitive damages. *Leahy v. Guaranty Nat. Ins. Co.*, 907 P.2d 697 (Colo. App. 1995).

Supreme court overrules *Leahy v. Guaranty Nat. Ins. Co.*, 907 P.2d 697 (Colo. App. 1995), to the extent it can be read as equating willful and wanton conduct under the no fault act and insurance bad faith. *Dale v. Guaranty Nat'l Ins. Co.*, 948 P.2d 545 (Colo. 1997).

**A surety is subject to a claim of bad faith by the beneficiary of a contract.** Although no contract had been entered into between a school district and the surety for the contractor hired by the district, the trial court did not err in allowing the district's common law claim for bad faith breach of the performance bond contract to be submitted to the jury. *Brighton Sch. Dist. 27J v. Transamerica Premier Ins. Co.*, 923 P.2d 328 (Colo. App. 1996), *aff'd*, 940 P.2d 348 (Colo. 1997).

**This section applies only to insurers and not insurance brokerage firms.** *Sewell v. Great N. Ins. Co.*, 535 F.3d 1166 (10th Cir. 2008).

**Jury instruction that failed to define "reasonable basis" was defective.** *Miller v. Byrne*, 916 P.2d 566 (Colo. App. 1995).

**10-3-1114. Construction of part 11.** Except as provided in sections 10-3-1115 and 10-3-1116, nothing in this part 11 shall be construed to create a private cause of action based on alleged violations of this part 11 or to abrogate any common law contract or tort cause of action.

**Source:** L. 87: Entire section added, p. 424, § 1, effective July 1. L. 2008: Entire section amended, p. 2172, § 4, effective August 5.

#### ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988).

**10-3-1115. Improper denial of claims - prohibited - definitions - severability.** (1) (a) A person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant.

(b) For the purposes of this section and section 10-3-1116:

(I) "First-party claimant" means an individual, corporation, association, partnership, or other legal entity asserting an entitlement to benefits owed directly to or on behalf of an insured under an insurance policy. "First-party claimant" includes a public entity that has paid a claim for benefits due to an insurer's unreasonable delay or denial of the claim.

(II) "First-party claimant" does not include:

(A) A nonparticipating provider performing services; or

(B) A person asserting a claim against an insured under a liability policy.

(2) Notwithstanding section 10-3-1113 (3), for the purposes of an action brought pursuant to this section and section 10-3-1116, an insurer's delay or denial was unreasonable if the insurer delayed or denied authorizing payment of a covered benefit without a reasonable basis for that action.

(3) If any provision of this section or its application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of this section shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of this section are severable.

(4) The general assembly declares that this section is a law regulating insurance.

(5) This section and section 10-3-1116 shall not apply to insurance issued in compliance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

(6) This section and section 10-3-1116 shall not apply to title insurance issued pursuant to article 11 of this title or to life insurance issued pursuant to article 7 of this title.

**Source: L. 2008:** Entire section added, p. 2172, § 5, effective August 5.

#### ANNOTATION

**Law reviews.** For article, "CRS §§ 10-3-1115 and -1116: Providing Remedies to First-Party Claimants", see 39 Colo. Law. 69 (July 2010).

**This section and § 10-3-1116** impose on insurers a statutory standard of liability in addition

to and different from that required to prove a claim for breach of the common law duty of good faith and fair dealing as expressed in § 10-3-1113. *Kisselman v. Am. Family Mut. Ins. Co.*, \_\_ P.3d \_\_ (Colo. App. 2011).

**10-3-1116. Remedies for unreasonable delay or denial of benefits - required contract provision - frivolous actions - severability.** (1) A first-party claimant as defined in section 10-3-1115 whose claim for payment of benefits has been unreasonably delayed or denied may bring an action in a district court to recover reasonable attorney fees and court costs and two times the covered benefit.

(2) An insurance policy, insurance contract, or plan that is issued in this state that offers health or disability benefits shall not contain a provision purporting to reserve discretion to the insurer, plan administrator, or claim administrator to interpret the terms of the policy, contract, or plan or to determine eligibility for benefits.

(3) An insurance policy, insurance contract, or plan that is issued in this state shall provide that a person who claims health, life, or disability benefits, whose claim has been denied in whole or in part, and who has exhausted his or her administrative remedies shall be entitled to have his or her claim reviewed de novo in any court with jurisdiction and to a trial by jury.

(4) The action authorized in this section is in addition to, and does not limit or affect, other actions available by statute or common law, now or in the future. Damages awarded pursuant to this section shall not be recoverable in any other action or claim.

(5) If the court finds that an action brought pursuant to this section was frivolous as provided in article 17 of title 13, C.R.S., the court shall award costs and attorney fees to the defendant in the action.

(6) If any provision of this section or its application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of this section shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of this section are severable.

(7) The general assembly declares that this section is a law regulating insurance.



**Source: L. 2008:** Entire section added, p. 2173, § 5, effective August 5.

#### ANNOTATION

**Law reviews.** For article, “CRS §§ 10-3-1115 and -1116: Providing Remedies to First-Party Claimants”, see 39 Colo. Law. 69 (July 2010). For article, “CRS § 10-3-1116, ERISA Preemption, and the Standard of Review”, see 39 Colo. Law. 75 (July 2010).

**This section is not expressly preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA).** *McClenahan v. Metro. Life Ins. Co.*, 621 F. Supp. 2d 1135 (D. Colo. 2009).

**This section is saved from preemption by ERISA** because it is a law regulating insurance within the meaning of 29 U.S.C. § 1144(b)(2)(A). *Kohut v. Hartford Life & Acc. Ins. Co.*, 710 F. Supp. 2d 1139 (D. Colo. 2008).

**This section does not apply retroactively.** There is no evidence suggesting that the general assembly intended this section to apply retroactively. Accordingly, it operates prospectively. *Kohut v. Hartford Life & Acc. Ins. Co.*, 710 F. Supp. 2d 1139 (D. Colo. 2008).

**Application of this section to dispute involving termination of long-term disability benefits would constitute an improper retrospective application of the statute.** Statute became effective after all of the events relevant to the case had occurred, including the filing of the lawsuit. *McClenahan v. Metro. Life Ins. Co.*, 621 F. Supp. 2d 1135 (D. Colo. 2009).

**Statutory insurance bad faith claim is preempted by ERISA.** Claim based on unreasonable delay pursuant to subsection (1) is preempted under the principles of conflict preemption. *Timm v. Prudential Ins. Co. of Am.*, 259 P.3d 521 (Colo. App. 2011).

**This section and § 10-3-1115 impose on insurers a statutory standard of liability in addition to and different from that required to prove a claim for breach of the common law duty of good faith and fair dealing as expressed in § 10-3-1113.** *Kisselman v. Am. Family Mut. Ins. Co.*, \_\_\_ P.3d \_\_\_ (Colo. App. 2011).

#### PART 12

#### SYSTEMS FOR HOLDING AND TRANSFERRING SECURITIES

**10-3-1201. Legislative declaration.** The purpose of section 10-3-210 (2) and this part 12 is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate regulations of the commissioner.

**Source: L. 83:** Entire part added, p. 451, § 2, effective May 3.

**10-3-1202. Definitions.** As used in this part 12, unless the context otherwise requires:

(1) “Clearing corporation” has the meaning ascribed to it in section 4-8-102 (a) (5), C.R.S.; except that, with respect to a security issued by an institution organized or existing under the laws of any foreign country or a security used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, “clearing corporation” includes a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book-entry.

(2) “Direct participant” means a bank or trust company or other institution which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(3) “Federal reserve book-entry system” means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the federal reserve system or which otherwise have access to such computerized system.

(4) “Member bank” means a national bank, state bank, or trust company which is a member of the federal reserve system and through which an insurance company participates in the federal reserve book-entry system.

(5) “Security” has any of the meanings specified in section 4-8-102 (a) (15), C.R.S.

**Source: L. 83:** Entire part added, p. 451, § 2, effective May 3. **L. 96:** (1) and (5) amended, p. 245, § 22, effective July 1.

**10-3-1203. Book-entry system.** (1) Notwithstanding any provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any member bank through which an insurance company holds securities in the federal reserve book-entry system and the records of any custodian banks through which an insurance company holds securities in a clearing corporation shall, at all times, show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

(2) The commissioner is authorized to promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system.

**Source: L. 83:** Entire part added, p. 452, § 2, effective May 3.

## PART 13

### MODEL QUALITY REPLACEMENT PARTS ACT

**10-3-1301. Short title.** This part 13 shall be known and may be cited as the “Model Quality Replacement Parts Act”.

**Source: L. 89:** Entire part added, p. 450, § 1, effective July 1.

**10-3-1302. Legislative declaration.** The general assembly declares that the purpose of this article is to recognize the use of replacement automobile crash parts by requiring disclosure when any use is proposed of a nonoriginal equipment replacement crash part, and by requiring that the manufacturer of any such replacement crash part be adequately identified.

**Source: L. 89:** Entire part added, p. 450, § 1, effective July 1.

**10-3-1303. Definitions.** As used in this part 13, unless the context otherwise requires:

(1) “Insurer” means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance, and any person authorized to represent an insurer with respect to a claim.

(2) “Nonoriginal equipment replacement crash part” means a replacement crash part which is not supplied by the manufacturer of the motor vehicle on which the part is used.

(3) “Replacement crash part” means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.

**Source: L. 89:** Entire part added, p. 450, § 1, effective July 1.



**10-3-1304. Identification of parts.** Any nonoriginal equipment replacement crash part supplied for use in this state shall have the name or trademark of the manufacturer affixed to or inscribed on it. Such name or trademark shall be placed so as to be visible after installation of the part whenever practicable.

**Source: L. 89:** Entire part added, p. 451, § 1, effective July 1.

**10-3-1305. Disclosure.** No insurer shall specify the use of nonoriginal equipment replacement crash parts in the repair of an insured's motor vehicle without disclosing the intended use of such parts to the insured. In all instances where nonoriginal equipment replacement crash parts are intended for use by an insurer, the written estimate shall clearly identify each such part as being a nonoriginal equipment replacement crash part, and a disclosure document containing the following information in ten-point type or larger type shall appear on or be attached to the insured's copy of the estimate: "This estimate has been prepared based on the use of one or more crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties, if any, applicable to these replacement crash parts are provided by the parts manufacturer or distributor rather than by the manufacturer of your vehicle."

**Source: L. 89:** Entire part added, p. 451, § 1, effective July 1.

**10-3-1306. Unfair and deceptive acts.** A violation of or noncompliance with any provision of this part 13 shall be an unfair method of competition and unfair or deceptive act or practice in the business of insurance subject to the provisions of part 11 of this article.

**Source: L. 89:** Entire part added, p. 451, § 1, effective July 1.

**10-3-1307. Liability.** Nothing in this part 13 shall affect either rights, defenses, or liabilities of parties otherwise available at law regarding damages or injuries arising from the use of replacement crash parts.

**Source: L. 89:** Entire part added, p. 451, § 1, effective July 1.

## PART 14

### MODEL RISK RETENTION ACT

**10-3-1401. Short title.** This part 14 shall be known and may be cited as the "Model Risk Retention Act".

**Source: L. 91:** Entire part added, p. 1248, § 10, effective July 1.

**10-3-1402. Purpose.** The purpose of this part 14 is to authorize the commissioner to regulate the formation or operation, or both, of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal "Liability Risk Retention Act of 1986", to the extent permitted by such federal law.

**Source: L. 91:** Entire part added, p. 1248, § 10, effective July 1.

**10-3-1403. Authority of commissioner.** The commissioner may establish, and from time to time amend, such regulations as are necessary to enable the commissioner to regulate risk retention groups and purchasing groups in this state to the extent permitted by the federal "Liability Risk Retention Act of 1986" and pursuant to the provisions of the laws of the state of Colorado.

**Source: L. 91:** Entire part added, p. 1248, § 10, effective July 1.

**Cross references:** For the “Liability Risk Retention Act of 1986”, see 15 U.S.C. § 3901 et seq.

## ARTICLE 3.5

### Certified Capital Companies

10-3.5-101.	Short title.	10-3.5-107.	Requirements for continuance of certification - fees.
10-3.5-102.	Legislative declaration.	10-3.5-108.	Distributions - remittance of portion of proceeds.
10-3.5-103.	Definitions.	10-3.5-109.	Annual review - decertification - penalties.
10-3.5-104.	Certification - fees.	10-3.5-110.	Transferability.
10-3.5-105.	Premium tax credit.		
10-3.5-106.	Aggregate limitations on credits.		

**10-3.5-101. Short title.** This article shall be known and may be cited as the “Certified Capital Company Act”.

**Source: L. 2001:** Entire article added, p. 1525, § 1, effective June 9.

**10-3.5-102. Legislative declaration.** (1) The primary purpose of the “Certified Capital Company Act” is to provide assistance in the formation of new businesses and the expansion of existing businesses that create jobs in the state by providing an incentive for insurance companies to invest in certified capital companies.

(2) The general assembly hereby:

(a) Finds that the legislative audit committee of the general assembly has evaluated the implementation of the “Certified Capital Company Act” pursuant to Senate Joint Resolution 03-050, enacted at the first regular session of the sixty-fourth general assembly;

(b) Determines that the allocation of premium tax credits under the “Certified Capital Company Act” that was to be made after January 31, 2004, has been repealed and reallocated pursuant to the provisions of Senate Bill 04-106 and House Bill 04-1206, enacted at the second regular session of the sixty-fourth general assembly, which leaves only those premium tax credits allocated before January 31, 2004, remaining subject to the “Certified Capital Company Act”; and

(c) Declares that:

(I) The “Certified Capital Company Act” should be modified to more efficiently and effectively achieve the purposes for which it was enacted, in particular by amending the method by which the office of economic development calculates certified capital companies’ internal rate of return to address ambiguities and weaknesses in current law; and

(II) Those purposes are best served by prospectively amending the “Certified Capital Company Act” pursuant to Senate Bill 04-247 and House Bill 04-1190, enacted at the second regular session of the sixty-fourth general assembly. No provision of this article shall be construed to retrospectively modify any existing statutory, regulatory, or contractual obligation.

**Source: L. 2001:** Entire article added, p. 1525, § 1, effective June 9. **L. 2004:** Entire section amended, p. 1242, § 1, effective May 27; entire section amended, p. 1326, § 1, effective May 28.

**Editor’s note:** Amendments to this section by House Bill 04-1190 and Senate Bill 04-247 were harmonized.

**10-3.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) (a) “Affiliate”, with respect to a certified capital company or insurance company, means:



(I) Any person who, directly or indirectly, beneficially owns (whether through rights, options, convertible interests, or otherwise), controls, or holds power to vote fifteen percent or more of the outstanding voting securities or other voting ownership interests of the certified capital company or insurance company, as applicable;

(II) Any person, fifteen percent or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned (whether through rights, options, convertible interests, or otherwise), controlled, or held with power to vote by the certified capital company or insurance company, as applicable;

(III) Any person who, directly or indirectly, controls, is controlled by, or is under common control with the certified capital company or insurance company, as applicable;

(IV) A partnership in which the certified capital company or insurance company, as applicable, is a general partner; or

(V) Any person who is an officer, director, employee, or agent of the certified capital company or insurance company, as applicable, or an immediate family member of such officer, director, employee, or agent.

(b) Notwithstanding paragraph (a) of this subsection (1), an investment by a certified investor in a certified capital company pursuant to an allocation of premium tax credits in accordance with section 10-3.5-106 shall not cause such certified capital company to become an affiliate of such certified investor.

(2) "Allocation date" means the date on which the office allocates premium tax credits to the certified investors of a certified capital company.

(3) "Certified capital" means an amount of cash that:

(a) Is invested by a certified investor in a certified capital company; and

(b) Fully funds the purchase price of either or both the certified investor's equity interest in the certified capital company or a qualified debt instrument issued by the certified capital company.

(4) "Certified capital company" means a partnership, corporation, trust, or limited liability company, organized on a for-profit basis, that has its principal office located or is headquartered in Colorado, that has as its primary business activity the investment of cash in qualified businesses or qualified rural businesses, and that is certified by the office as meeting the criteria of this article.

(5) "Certified investor" means any insurance company that contributes certified capital pursuant to an allocation of premium tax credits as set forth in section 10-3.5-106.

(6) "Designated rural county" means any county, but not any city and county, in this state that, as of June 9, 2001, has a population of not more than one hundred fifty thousand people and, if the county's population exceeds twenty thousand people, that has a growth rate that does not exceed the statewide average for the period 1990-2000 by more than twenty-five percent as defined in the two most recent decennial censuses.

(7) "Distressed urban community" means any county or portion of a county in this state as defined by the office.

(8) "Office" means the Colorado office of economic development, created in section 24-48.5-101, C.R.S.

(9) "Person" means any natural person or entity, including without limitation a corporation, general or limited partnership, trust, or limited liability company.

(10) "Premium tax credit allocation claim" means a claim for allocation of premium tax credits prepared and executed by a certified investor on a form provided by the office and filed by a certified capital company with the office. The form shall indicate whether the premium tax credit allocation claim is for an allocation of premium tax credits pursuant to section 10-3.5-106 (2) (a) (I) or (2) (a) (II) and shall include an affidavit of the certified investor pursuant to which such certified investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated, even if such amount is less than the amount of the claim, subject only to the receipt of an allocation pursuant to section 10-3.5-106.

(11) "Qualified business" means a business that:

(a) Meets all of the following conditions as of the time of a certified capital company's first investment in the business if that investment occurred before May 27, 2004:

(I) It is headquartered in this state, and its principal business operations are located in this state;

(II) It is a small business concern as described in the small business size regulations of the United States small business administration, 13 CFR 121.201; and

(III) It is not a business predominantly engaged in professional services provided by accountants or lawyers.

(b) Subject to paragraph (c) of this subsection (11), meets all of the following conditions as of the time of a certified capital company's first investment in the business if that investment occurs on or after May 27, 2004:

(I) Either of the following:

(A) It is headquartered in this state, its principal business operations are located in this state, and the certified capital company has a reasonable expectation, based upon an affidavit of one of the principal officers of the business or other comparable evidence, that the business intends to preserve its headquarters and principal place of business in Colorado for at least three years after the qualified investment and that it will expend substantially all of the qualified investment within Colorado pursuant to criteria adopted by the office by rule. If a business meets some but not all of the criteria of this sub-subparagraph (A), the business may nevertheless be deemed to be a qualified business if the Colorado economic development commission determines that an investment of certified capital proposed by a certified capital company pursuant to this article will further the economic development of the state.

(B) It has entered into a contract with the certified capital company to comply, within ninety days after finalization of the contract, with sub-subparagraph (A) of this subparagraph (I), and the contract contains enforceable provisions requiring a return of any investment of certified capital if the business fails to so comply.

(II) It is a small business concern as described in the small business size regulations of the United States small business administration, 13 CFR 121.201; and

(III) It is not a business predominantly engaged in:

(A) Professional services provided by accountants, doctors, or lawyers;

(B) Banking or lending;

(C) Real estate development;

(D) Insurance;

(E) Oil and gas exploration;

(F) Direct gambling activities, which shall not include ancillary gambling equipment and other indirect gambling activities, as defined by the office; or

(G) Businesses that make loans to or invest in a certified capital company or an affiliate of a certified capital company or insurance company.

(c) Any business that is classified as a qualified business pursuant to paragraph (b) of this subsection (11) at the time of the first qualified investment in said business shall remain classified as a qualified business, may receive continuing qualified investments, and such continuing investments shall be qualified investments even though such business may not meet the definition of a qualified business at the time of such continuing investments; except that, unless otherwise determined by the economic development commission, such business shall not be eligible to receive further qualified investments if:

(I) It has relocated its headquarters or principal business operations outside of this state; or

(II) It has not expended substantially all of its prior qualified investments within Colorado pursuant to criteria adopted by the office by rule; except that this limitation shall not be deemed to either:

(A) Preclude the purchase of services or goods from outside of Colorado if such services are performed and such goods are used in Colorado; or

(B) Apply retroactively to disqualify a qualified investment previously approved by the office after the qualified investment has been made.

(12) "Qualified debt instrument" means a debt instrument issued by a certified capital company, at par value or a premium, with an original maturity date of at least five years after the date of issuance, a repayment schedule that is no faster than a level principal amortization over five years, and interest, distribution, or payment features that are not



related to the profitability of the certified capital company or the performance of the certified capital company's investment portfolio.

(13) "Qualified distribution" means any distribution out of certified capital in connection with any of the following:

(a) Reasonable costs and expenses of forming, syndicating, and organizing the certified capital company, including reasonable and necessary fees paid for professional services, including, but not limited to, legal and accounting services, related to the formation of the certified capital company, and the cost of financing and insuring the obligations of the certified capital company;

(b) Reasonable costs and expenses of managing and operating the certified capital company, including an annual management fee in an amount that does not exceed two and one-half percent of certified capital; except that:

(I) No such cost or expense shall be paid to a certified investor or affiliate of a certified investor;

(II) No such cost or expense shall be paid for federal or state taxes, including penalties and interest related to state and federal income taxes, of the equity owners of a certified capital company resulting from a tax liability of the certified capital company; and

(III) Such costs and expenses in the aggregate shall not exceed five percent of certified capital in any one year;

(c) Reasonable and necessary fees in accordance with industry custom for professional services, including but not limited to legal and accounting services, related to the operation of the certified capital company; except that such professional services shall not be construed to include litigation challenging the validity or effect of this article, lobbying, or governmental relations.

(d) (Deleted by amendment, L. 2004, p. 1, § 1, effective January 20, 2004.)

(14) (a) "Qualified investment" means the investment of cash by a certified capital company in a qualified business or qualified rural business for the purchase of any debt, debt participation, equity, or hybrid security, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments, including, but not limited to, options or warrants; except that, with respect to all certified capital invested pursuant to an allocation of tax credits pursuant to section 10-3.5-106 (2) (a) (I), the investment shall be made in a qualified rural business.

(b) Unless previously approved by the office based upon unique circumstances, a certified capital company shall not make a loan on or after May 27, 2004, to a qualified business or qualified rural business unless the business has received two written loan rejection letters from two different commercial banks that are federally or state chartered in Colorado and that make small business loans, at least one of which banks is a preferred or certified lender designated by the federal small business administration. Any such loan by a certified capital company shall not be made through or in connection with any guaranteed loan program. Additionally, a certified capital company shall not make a loan on or after May 27, 2004, to a qualified business or qualified rural business unless the state's revolving loan fund that covers the area where the business is located has declined the loan.

(15) "Qualified rural business" means a qualified business that has its principal business operations in a designated rural county.

(15.5) "Seed or early stage", in reference to a qualified business, means that the qualified business, at the time of the initial qualified investment, either:

(a) Had less than five hundred thousand dollars in total revenues for the fiscal year immediately preceding the initial qualified investment;

(b) Has received no more than one investment from a professional venture capital firm with funds raised from institutional investors; or

(c) Does not have positive operational cash flow for the fiscal year immediately preceding the initial qualified investment.

(16) "State premium tax liability" means any liability incurred by an insurance company under the provisions of sections 10-3-209 and 10-6-128, or, in the case of a repeal or reduction by the state of the liability imposed by section 10-3-209 or 10-6-128, any other tax liability imposed upon an insurance company by the state.

**Source: L. 2001:** Entire article added, p. 1525, § 1, effective June 9. **L. 2004:** (13)(b), (13)(c), and (13)(d) amended, p. 1, § 1, effective January 20; (10) and (14) amended, p. 24, § 2, effective March 4; (10) and (14) amended, p. 44, § 2, effective March 4; (11) and (14) amended and (15.5) added, p. 1243, § 2, effective May 27.

**Editor's note:** Amendments to subsection (14) by Senate Bill 04-247 were harmonized with Senate Bill 04-106 and House Bill 04-1206.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsections (10) and (14), see section 1 of chapter 11, Session Laws of Colorado 2004. For the legislative declaration contained in the 2004 act amending subsections (10) and (14), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-3.5-104. Certification - fees.** (1) The office shall establish by rule the procedures for making an application to become a certified capital company.

(2) An applicant shall:

(a) File an application with the office;

(b) Pay a nonrefundable application fee of seven thousand five hundred dollars at the time of filing the application;

(c) Have an equity capitalization at the time of seeking certification of five hundred thousand dollars or more in the form of unencumbered cash, marketable securities, or other liquid assets. The applicant shall submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than thirty-five days before the application date that states whether the applicant satisfies this equity capitalization requirement.

(d) Have at least two principals or at least two persons employed to manage the funds who each have at least two years of money management experience in the venture capital industry; except that an applicant that seeks to be certified with respect to premium tax credits to be allocated pursuant to section 10-3.5-106 (2) (a) (I) need only have at least two principals or at least two persons employed to manage the funds who each have at least two years of experience in either the venture capital or investment banking industry.

(3) The office shall verify whether the applicant meets the requirements of subsection (2) of this section.

(4) Any offering material involving the sale of securities of the certified capital company shall include the following statement:

By authorizing the formation of a certified capital company, the state does not necessarily endorse the quality of management or the potential for earnings of such company and is not liable for damages or losses to a certified investor in the company. Use of the word "certified" in an offering does not constitute a recommendation or endorsement of the investment by the Colorado office of economic development. If any applicable provisions of the "Certified Capital Company Act" are violated, the state may require forfeiture of unused premium tax credits and repayment of used premium tax credits.

(5) The office shall stamp applications for certification with the date and time of receipt. Within thirty days after receipt of an application, the office shall issue the certification or refuse the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of such grounds. The office shall review and approve or reject applications in the order submitted, treating all applications received on the same day as being received simultaneously; except that an application that is incomplete or for which additional information is requested by the office shall be treated as having been received on the date originally submitted only if the applicant submits the additional information within fifteen days after the office's request. The deadline for review may be extended by the office an additional ten days. The certification issued by the office shall indicate whether the certification is applicable only to credits to be allocated pursuant to section 10-3.5-106 (2) (a) (I).



(6) (a) No insurance company or affiliate of an insurance company shall, directly or indirectly:

(I) Beneficially own, whether through rights, options, convertible interests, or otherwise, fifteen percent or more of the voting securities or other voting ownership interests of a certified capital company;

(II) Manage a certified capital company; or

(III) Control the direction of investments for a certified capital company.

(b) A certified capital company may obtain a guaranty, indemnity, bond, insurance policy, or other payment undertaking for the benefit of its certified investors from any entity; except that in no case shall more than one certified investor of such certified capital company or affiliate of such certified investor be entitled to provide such guaranty, indemnity, bond, insurance policy, or other payment undertaking in favor of the certified investors of the certified capital company and its affiliates in this state.

(c) This subsection (6) shall not preclude a certified investor, insurance company, or other party from exercising its legal rights and remedies, including, without limitation, interim management of a certified capital company, in the event that a certified capital company is in default of its statutory obligations or its contractual obligations to such certified investor, insurance company, or other party.

**Source:** L. 2001: Entire article added, p. 1528, § 1, effective June 9. L. 2004: (2)(d) and (5) amended, p. 25, § 3, effective March 4; (2)(d) and (5) amended, p. 45, § 3, effective March 4.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsections (2)(d) and (5), see section 1 of chapter 11, Session Laws of Colorado 2004. For the legislative declaration contained in the 2004 act amending subsections (2)(d) and (5), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-3.5-105. Premium tax credit.** (1) Any certified investor that makes an investment of certified capital pursuant to an allocation of premium tax credits as set forth in section 10-3.5-106 shall, during the year of investment, earn a vested credit against state premium tax liability equal to one hundred percent of the certified investor's investment of certified capital. With respect to investments of certified capital made after January 31, 2002, but before January 31, 2004, a certified investor shall be entitled to take up to ten percent of the vested premium tax credit each year beginning in tax year 2003 and continuing thereafter for ten years or, if the credit is carried forward pursuant to subsection (2) of this section, until the credit is fully utilized.

(2) The credit to be applied against state premium tax liability in any one year shall not exceed the state premium tax liability of the certified investor for such taxable year. All unused credits against state premium tax liability may be carried forward for up to ten years from the date on which the credit may first be utilized.

(3) A certified investor claiming a credit against state premium tax liability earned through an investment in a certified capital company shall not be required to pay any additional or retaliatory tax as a result of claiming such credit.

**Source:** L. 2001: Entire article added, p. 1530, § 1, effective June 9. L. 2004: (1) amended, p. 26, § 4, effective March 4; (1) amended, p. 45, § 4, effective March 4.

**Editor's note:** Amendments to subsection (1) by House Bill 04-1206 and Senate Bill 04-106 were harmonized.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsection (1), see section 1 of chapter 11, Session Laws of Colorado 2004. For the legislative declaration contained in the 2004 act amending subsection (1), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-3.5-106. Aggregate limitations on credits.** (1) (a) The aggregate amount of certified capital for which premium tax credits are allowed for all certified investors under

this article shall not exceed the amount that would entitle all certified investors in certified capital companies to take aggregate credits of ten million dollars per year for ten years beginning in tax year 2003, which certified capital may be invested in certified capital companies no earlier than January 31, 2002. A certified capital company, on an aggregate basis together with its affiliates, shall not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed at the time of filing as provided in this subsection (1); except that a certified capital company whose certification is applicable only to credits to be allocated pursuant to subparagraph (I) of paragraph (a) of subsection (2) of this section shall not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed pursuant to such subparagraph (I) at the time of filing.

(b) (I) Subject to subparagraph (II) of this paragraph (b) and pursuant to rules promulgated by the office, one or more certified investors may claim up to ten million dollars of state premium tax credits annually for ten years beginning in tax year 2005 for investments occurring on or after April 1, 2004, of certified capital in one or more certified capital companies to be used for qualified investments. With regard to such investments:

(A) Twenty-five percent of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies for investments in qualified rural businesses in the order in which premium tax credit allocation claims that request an allocation of premium tax credits under this sub-subparagraph (A) are filed with the office by certified capital companies on behalf of their certified investors; and

(B) After the certified capital has been allocated pursuant to sub-subparagraph (A) of this subparagraph (I), seventy-five percent of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies in the order in which premium tax credit allocation claims that request an allocation of premium tax credits under this sub-subparagraph (B) are filed with the office by certified capital companies on behalf of their certified investors.

(II) (A) Notwithstanding any other requirement of this article, of the ten million dollars of tax credits that would otherwise be claimed annually for ten years beginning in tax year 2005 pursuant to this subsection (1), five million dollars shall not be claimed pursuant to this subsection (1) and an equivalent amount of credits may instead be claimed annually pursuant to part 2 of article 46 of title 24, C.R.S.; except that, if H.B. 04-1206 is enacted at the second regular session of the sixty-fourth general assembly, becomes law, and is subsequently declared to be unconstitutional by a final judgment that invalidates the tax credits enacted by such bill, the remaining five million dollars of tax credits that would otherwise be claimed pursuant to this subsection (1) annually for each of the remaining calendar years through 2014 shall not be claimed pursuant to this subsection (1), and a total of ten million dollars of tax credits may instead be claimed annually for each of the remaining calendar years through 2014 pursuant to part 2 of article 46 of title 24, C.R.S.

(B) Notwithstanding any other requirement of this article, of the ten million dollars of tax credits that would otherwise be claimed annually for ten years beginning in tax year 2005 pursuant to this subsection (1), five million dollars shall not be claimed pursuant to this subsection (1) and an equivalent amount of credits may instead be claimed annually pursuant to section 10-8-534; except that, if S.B. 04-106 is enacted at the second regular session of the sixty-fourth general assembly, becomes law, and is subsequently declared to be unconstitutional by a final judgment that invalidates the tax credits enacted by such bill, the remaining five million dollars of tax credits that would otherwise be claimed annually each of the remaining calendar years through 2014 shall not be claimed pursuant to this subsection (1), and a total of ten million dollars of tax credits may instead be claimed annually for each of the remaining calendar years through 2014 pursuant to section 10-8-534.

(2) (a) With regard to investments to be made in certified capital companies no earlier than January 31, 2002, but prior to January 31, 2004:

(I) Twenty-five million dollars of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies in the order in which premium tax credit allocation claims that request an allocation of premium tax



credits under this subparagraph (I) are filed with the office by certified capital companies on behalf of their certified investors; and

(II) After all twenty-five million dollars have been allocated pursuant to subparagraph (I) of this paragraph (a), seventy-five million dollars of certified capital for which premium tax credits are allowed shall be allocated to certified investors in certified capital companies in the order in which premium tax credit allocation claims that request an allocation of premium tax credits under this subparagraph (II) are filed with the office by certified capital companies on behalf of their certified investors.

(b) (Deleted by amendment, L. 2004, pp. 26, 46, §§ 5, 5, effective March 4, 2004.)

(3) If two or more certified capital companies file premium tax credit allocation claims seeking an allocation of premium tax credits pursuant to the same subparagraph of paragraph (a) of subsection (2) of this section with the office on behalf of their respective certified investors on the same day and the sum of such premium tax credit allocation claims exceeds, in the aggregate, the maximum aggregate amount available under such particular subparagraph at the time of filing, the capital for which premium tax credits are allowed under such particular subparagraph shall be allocated among the certified investors on a pro rata basis. The pro rata allocation for any one certified investor shall bear the same relation to the maximum aggregate amount available under such particular subparagraph at the time of filing, as that certified investor's premium tax credit allocation claim under such particular subparagraph bears to the total of all premium tax credit allocation claims seeking an allocation of premium tax credits pursuant to the same subparagraph of paragraph (a) of subsection (2) of this section filed on behalf of all certified investors on the same day.

(4) Within five business days after the office receives a premium tax credit allocation claim filed by a certified capital company on behalf of one or more of its certified investors, the office shall notify the certified capital company of the amount of tax credits allocated to each of the certified investors in such certified capital company.

(5) If a certified capital company does not receive an investment of certified capital equaling the amount of premium tax credits allocated to a certified investor for which it filed a premium tax credit allocation claim within five business days after its receipt of notice of allocation, that portion of the premium tax credits allocated to such certified investor in the certified capital company shall be forfeited and the office shall reallocate the certified capital among the other certified investors in all certified capital companies that filed premium tax credit allocation claims under the same subparagraph under which the forfeited credits were allocated on a pro rata basis in accordance with subsection (3) of this section. The office is authorized to levy a fine of not more than fifty thousand dollars on any certified investor that does not invest the full amount of certified capital allocated by the office to such investor in accordance with the premium tax credit allocation claim filed on its behalf.

(6) The maximum amount of premium tax credit allocation claims that any one certified investor and its affiliates may file in one or more certified capital companies shall not exceed fifteen percent of the maximum aggregate amount available under subsection (1) of this section at the time of such filing; except that a certified investor that files a premium tax credit allocation claim for an investment in a certified capital company whose certification is applicable only to credits to be allocated pursuant to subparagraph (I) of paragraph (a) of subsection (2) of this section shall not file, on an aggregate basis with its affiliates, premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed pursuant to such subparagraph (I) at the time of filing.

(7) Unless its certification indicates otherwise, a certified capital company may file premium tax credit allocation claims on behalf of its certified investors pursuant to either or both of the subparagraphs of paragraph (a) of subsection (2) of this section. If the certified investors of a certified capital company are allocated premium tax credits pursuant to both subparagraphs of paragraph (a) of subsection (2) of this section, the requirements of this act shall apply to the certified capital invested pursuant to each such allocation on a separate and independent basis.

**Source:** L. 2001: Entire article added, p. 1531, § 1, effective June 9. L. 2004: (1), (2)(b), (3), (6), and (7) amended, p. 26, § 5, effective March 4; (1), (2)(b), (3), (6), and (7) amended, p. 46, § 5, effective March 4.

**Editor's note:** Amendments to subsection (1) by House Bill 04-1206 and Senate Bill 04-106 were harmonized.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsections (1), (2)(b), (3), (6), and (7), see section 1 of chapter 11, Session Laws of Colorado 2004. For the legislative declaration contained in the 2004 act amending subsections (1), (2)(b), (3), (6), and (7), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-3.5-107. Requirements for continuance of certification - fees.** (1) To continue to be eligible for certification, a certified capital company shall make qualified investments according to the following schedule:

(a) Within the period ending three years after an allocation date, a certified capital company shall have made qualified investments cumulatively equal to at least thirty percent of the certified capital allocated to its certified investors on such allocation date.

(b) Within the period ending five years after an allocation date, a certified capital company shall have made qualified investments cumulatively equal to at least fifty percent of the certified capital allocated to its certified investors on such allocation date.

(2) The aggregate cumulative amount of all qualified investments made by the certified capital company from an allocation date shall be considered in the calculation of the percentage requirements under this article. For purposes of satisfying the percentage requirements of subsection (1) of this section only, a certified capital company that has raised certified capital pursuant to an allocation under section 10-3.5-106 (2) (a) (II) shall be deemed to have invested two dollars for every dollar actually invested in a qualified rural business or qualified business that has its principal business operations located in a distressed urban community from certified capital raised under such section. Any proceeds received from a qualified investment may be invested in another qualified investment and shall count toward any requirement in this article with respect to investments of certified capital.

(3) Any business that is classified as a qualified business or qualified rural business at the time of the first investment in said business by a certified capital company shall remain classified as a qualified business or qualified rural business, as applicable, may receive continuing investments from any certified capital company or any of its affiliates, and such continuing investments shall be qualified investments even though such business may not meet the definition of a qualified business or qualified rural business, as applicable, at the time of such continuing investments; except that:

(a) A business that is a qualified business or qualified rural business at the time of the first investment by a certified capital company in such business when such investment occurs on or after May 27, 2004, but that subsequently violates the requirements of section 10-3.5-103 (11) (b) (I) or (11) (c) within the first six months after such qualified investment shall not be deemed to be a qualified business or qualified rural business, as applicable, for purposes of subsection (1) of this section and section 10-3.5-109 (2) (a) only, and may not receive continuing investments from any certified capital company or any of its affiliates.

(b) An investment in a business that relocates either its headquarters or its principal business operations outside of Colorado after six months but less than three years after the initial qualified investment shall:

(I) Not be deemed to satisfy a requirement of section 10-3.5-109 (2) (a) if such requirement has not already been complied with and if the relocation occurred during the certified capital company's investment in the business; and

(II) Be deemed to continue to satisfy a requirement of section 10-3.5-109 (2) (a) that has already been complied with and paragraphs (a) and (b) of subsection (1) of this section.

(4) A certified capital company shall not:

(a) Invest more than fifteen percent of its total certified capital in any one qualified business or qualified rural business; or

(b) Own, through an initial qualified investment occurring on or after May 27, 2004, in aggregate total with a business that was organized by, is a franchisee of, or is an affiliate of, the certified capital company, more than forty-nine percent of any one qualified business or qualified rural business without the specific approval of the office; except that nothing in this paragraph (b) shall preclude a certified capital company from exercising any:



(I) Right or remedy upon a default by the qualified business pursuant to an investment contract; or

(II) Anti-dilution or preemptive rights it may have been granted in connection with an initial qualified investment that can be exercised upon an investment in the business by a party other than the certified capital company or an affiliate of the certified capital company.

(5) At its option, a certified capital company, before making a proposed investment in a specific business, may request from the office a written opinion that the business in which it proposes to invest should be considered a qualified business or qualified rural business, as applicable. Upon receiving such a request, the office shall have ten working days to determine whether the business meets the definition of a qualified business or qualified rural business, as applicable, and notify the certified capital company of its determination with an explanation of the determination. If the office fails to notify the certified capital company with respect to the proposed investment within such ten-working-day period, the business in which the certified capital company proposes to invest shall be deemed to be a qualified business or qualified rural business, as applicable. If the office determines that the business in which the certified capital company proposes to invest before May 27, 2004, does not meet all of the criteria set forth in section 10-3.5-103 (11) (a) or (15), as applicable, the office may nevertheless consider the business a qualified business or qualified rural business, as applicable, and approve the investment if the Colorado economic development commission determines that the proposed investment will further the economic development of the state.

(6) All certified capital not currently invested in qualified investments by the certified capital company shall be invested in:

- (a) Cash that is deposited in a federally insured financial institution;
- (b) Certificates of deposit in a federally insured financial institution;
- (c) Investment securities that are obligations of the United States, its agencies, or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(d) Debt instruments rated at least "AA" or its equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a nationally recognized credit rating organization, and that is not subordinated to other unsecured indebtedness of the issuer or the guarantor, as the case may be;

(e) Obligations of this state, any municipality in this state, or any political subdivision thereof;

(f) Interests in money market funds, the portfolios of which are limited to cash and obligations described in this subsection (6); or

(g) Any other investments approved in advance and in writing by the office.

(7) (a) As soon as practicable after the receipt of certified capital, each certified capital company shall provide the office with a copy of all documents relating to each certified investor's investment of certified capital and shall report the following to the office:

(I) The name of each certified investor from which the certified capital was received, including such certified investor's insurance premium tax identification number;

(II) The amount of each certified investor's investment of certified capital and premium tax credits; and

(III) The date on which the certified capital was received.

(b) On or before January 31 of each year, each certified capital company shall report the following to the office:

(I) The amount of the certified capital company's certified capital at the end of the immediately preceding year;

(II) Whether or not the certified capital company has invested more than fifteen percent of its total certified capital in any one business;

(III) All qualified investments that the certified capital company made during the previous calendar year; and

(IV) The location and number of new jobs that have been created due to the certified capital company's qualified investments during the previous twelve months and since the certified capital company's initial qualified investment.

(c) Annually, and within ninety days after the close of its fiscal year, each certified capital company shall provide to the office an audited financial statement that includes the opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the certified capital company to determine if the certified capital company is complying with this article and the rules set forth by the office and that the moneys received by the certified capital company have been invested as required within the time limits provided by subsection (1) of this section.

(d) On or before January 31 of each year, each certified capital company shall pay to the office a nonrefundable certification fee of five thousand dollars; except that no such fee shall be required within six months of the initial allocation date of a certified capital company.

(e) During each calendar year from 2003 to 2010, the office shall hold a meeting in each of five counties that have populations of no more than one hundred fifty thousand persons at which a representative from each certified capital company shall be present to review business plans from qualified businesses headquartered in those counties.

**Source:** L. 2001: Entire article added, p. 1533, § 1, effective June 9. L. 2004: (2) amended, p. 28, § 6, effective March 4; (2) amended, p. 48, § 6, effective March 4; (3), (4), and (5) amended and (7)(b)(IV) added, pp. 1245, 1247, §§ 3, 4, effective May 27.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 11, Session Laws of Colorado 2004. For the legislative declaration contained in the 2004 act amending subsection (2), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-3.5-108. Distributions - remittance of portion of proceeds.** (1) Subject to section 10-3.5-109 (2) (a), a certified capital company may make qualified distributions at any time.

(2) (a) Subject to section 10-3.5-109 (2) (a) and paragraph (b) of this subsection (2), in order to make a distribution occurring on or after May 27, 2004, out of proceeds or gains from qualified investments, proceeds or gains from any other use of certified capital, equity capitalization contributions paid into the certified capital company on or after May 27, 2004, or certified capital allocated to its certified investors on a particular allocation date other than a qualified distribution or a distribution pursuant to paragraph (b) of this subsection (2), a certified capital company shall:

(I) Have made qualified investments in an amount cumulatively equal to:

(A) One hundred percent of the certified capital allocated to its certified investors on such allocation date and have met the six-month requirement stated in section 10-3.5-107 (3) (a); and

(B) At least one-third of the certified capital allocated to its certified investors under section 10-3.5-106 (2) (a) (II) in qualified businesses that are in the seed or early stage. Seed or early stage investments of certified capital allocated under section 10-3.5-106 (2) (a) (II) and section 10-3.5-106 (2) (a) (I) shall both count toward meeting the requirement of this sub-paragraph (B).

(II) Have proposed a distribution amount and calculated the amount of the transfers identified in subsection (3) of this section pursuant to rules promulgated by the office; and

(III) Make the transfers to the entities designated in paragraphs (c) and (d) of subsection (3) of this section.

(b) A certified capital company may make repayments of principal and interest on its indebtedness without any restriction whatsoever, including repayments of indebtedness of the certified capital company on which certified investors earned premium tax credits. A certified capital company may make a distribution:

(I) Without any restriction whatsoever to pay any projected increase in federal or state taxes, including penalties and interest related to federal and state income taxes, of the equity owners of a certified capital company resulting from operations or ownership of the certified capital company; or



(II) To return any equity capitalization paid into the certified capital company before May 27, 2004, from any equity capitalization contributions paid into the certified capital company before May 27, 2004, proceeds or gains from qualified investments, or proceeds or gains from any other use of certified capital.

(3) (a) (I) Subject to subparagraphs (II) and (III) of this paragraph (a), distributions out of proceeds or gains from qualified investments, proceeds or gains from any other use of certified capital, proceeds or gains from equity capitalization contributions, equity capitalization contributions, and certified capital allocated to certified investors on a particular allocation date shall be specifically examined as part of the annual review conducted pursuant to section 10-3.5-109. On the basis of such review, the office shall determine pursuant to rules whether the aggregate total of such distributions, when combined with all tax credits allocated on such allocation date and utilized pursuant to this article, have resulted in an annual internal rate of return exceeding ten percent on the certified capital allocated to the certified investors of the certified capital company on such allocation date plus any additional equity capital contributions to the certified capital company. Equity capital contributions shall not be deemed to include proceeds or gains from:

- (A) Qualified investments;
- (B) Any other use of certified capital; or
- (C) Equity capital contributions.

(II) Qualified distributions shall not be subject to the review conducted pursuant to subparagraph (I) of this paragraph (a).

(III) The following types of distribution shall specifically be subject to the review conducted pursuant to subparagraph (I) of this paragraph (a):

(A) A distribution to pay any projected increase in federal or state taxes of the equity owners of a certified capital company resulting from operations or ownership of the certified capital company;

(B) Repayments of principal and interest on a certified capital company's indebtedness, including repayments of indebtedness of the certified capital company on which certified investors earned premium tax credits;

(C) A distribution to return any equity capitalization paid into the certified capital company before May 28, 2004;

(D) A distribution to return any equity capitalization paid into the certified capital company on or after May 28, 2004; and

(E) Any other distribution other than a qualified distribution.

(b) (I) If the annual internal rate of return determined in accordance with paragraph (a) of this subsection (3) exceeds ten percent, then the certified capital company shall annually:

(A) Report to the division of housing in the department of local affairs the amount of money equal to twenty percent of any further distributions, from an item subject to subparagraph (I) or (III) of paragraph (a) of this subsection (3), above the amount required to produce such ten percent return; except that distributions for items described specifically in sub-subparagraph (A), (B), or (C) of subparagraph (III) of paragraph (a) of this subsection (3) shall either be reported to the division of housing or accrued for reporting at a later date as determined by the economic development commission; and except that in no event shall this sub-subparagraph (A) restrict a certified capital company's ability to make repayments of indebtedness, including making repayments of indebtedness of the certified capital company on which certified investors earned premium tax credits; and

(B) Make the transfers required pursuant to paragraphs (c) and (d) of this subsection (3).

(II) If the annual internal rate of return determined in accordance with paragraph (a) of this subsection (3) does not exceed ten percent, then the certified capital company shall annually:

(A) Report to the division of housing in the department of local affairs the amount of money equal to fifteen percent of the proposed distribution amount other than qualified distributions and distributions described in sub-subparagraphs (A), (B), and (C) of subparagraph (III) of paragraph (a) of this subsection (3);

(B) Make the transfers required pursuant to paragraphs (c) and (d) of this subsection (3); and

(C) Continue the fifteen percent distribution until the certified capital company's internal rate of return exceeds ten percent. At that time, all future transfer amounts shall be calculated using the method described in subparagraph (I) of this paragraph (b). Amounts previously transferred by the certified capital company shall be taken into consideration when determining the net amount of future transfers.

(III) The office shall promulgate rules to establish the procedures by which the internal rate of return is calculated and to govern other items such as the timing of distributions and the amount and timing of future capital contributions to the certified capital company to ensure that the calculation of the internal rate of return is accurately calculated.

(c) Upon the approval of the state housing board within the division of housing in accordance with rules promulgated by the board, the division shall direct each certified capital company that reports to the division pursuant to paragraph (b) of this subsection (3) to transfer to one or more local housing authorities, public nonprofit corporations, or private nonprofit corporations an amount of money equal to one-half of the amount identified in such report for:

(I) Development or redevelopment costs incurred prior to the completion or occupancy of low- or moderate-income housing, as defined in section 24-32-717 (4) (b), C.R.S., or for the rehabilitation of such housing;

(II) Providing incentives for the additional acquisition, construction, rehabilitation, or renovation of affordable housing that is made available to households of very low incomes and to households of senior citizens and that addresses the special needs of members of these communities, especially in connection with the availability of rental housing;

(III) Providing mixed-income housing to better ensure economic integration;

(IV) Ensuring the affordability of housing over the long term and helping to preserve project-based federally-authorized rental units;

(V) Allowing the state or a local government or any of their agencies to leverage federal, local, and private resources such as low-income housing tax credits, private activity bonds, mortgage revenue bonds, community development block grants, McKinney funds, home funds, private grants, and land donations to increase the pool of capital available to finance the provision of affordable housing;

(VI) Providing resources to local governments and other appropriate entities that result in the operation, construction, and renovation of emergency shelters and direct services linked to housing; or

(VII) Providing resources to local governments to assist home buyers with the financing of down payments or closing costs.

(d) The executive director of the department of human services shall direct each certified capital company that reports to the division pursuant to paragraph (b) of this subsection (3) to transfer to one or more approved community mental health clinics or approved community mental health centers, as defined in section 27-66-101, C.R.S., an amount of money equal to one-half of the amount identified in such report to be used solely for the purposes identified in sections 27-66-103 and 27-66-104 (3), C.R.S., taking into account the standards contained in section 27-66-105, C.R.S.

**Source: L. 2001:** Entire article added, p. 1536, § 1, effective June 9. **L. 2004:** (1) and (2) amended, p. 1247, § 5, effective May 27; (3)(a) and (3)(b) amended, p. 1327, § 2, effective May 28. **L. 2010:** (3)(d) amended, (SB 10-175), ch. 188, p. 777, § 6, effective April 29.

**10-3.5-109. Annual review - decertification - penalties.** (1) The office shall conduct an annual review of each certified capital company to determine whether the certified capital company is abiding by the requirements of certification, to advise the certified capital company as to the eligibility status of its qualified investments, and to ensure that no investment has been made in violation of this article. The cost of the annual review shall be paid by each certified capital company according to a reasonable fee schedule adopted by the office.

(2) (a) (I) Within the period ending ten years after an allocation date, a certified capital company shall have made qualified investments in an amount cumulatively equal to:



(A) One hundred percent of the certified capital allocated to its certified investors on such allocation date. Failure to comply with this requirement shall not subject the certified capital company to decertification.

(B) At least one-third of the certified capital allocated to its certified investors under section 10-3.5-106 (2) (a) (II) in qualified businesses that are in the seed or early stage. Seed or early stage investments of certified capital allocated under section 10-3.5-106 (2) (a) (II) and section 10-3.5-106 (2) (a) (I) shall both count toward meeting the requirement of this sub-subparagraph (B). Failure to comply with this requirement shall not subject the certified capital company to decertification.

(II) Beginning on the tenth anniversary of an allocation date, a certified capital company shall make no further distributions of any kind, including qualified distributions, from certified capital or proceeds or gains from any type of investment of certified capital, unless and until the certified capital company has made qualified investments cumulatively equal to one hundred percent of the certified capital allocated to its certified investors on such allocation date; except that this subparagraph (II) shall not prohibit payments on indebtedness of the certified capital company, including indebtedness to certified investors, on qualified debt instruments or distributions permitted by section 10-3.5-108 (2) (b).

(III) If a certified capital company fails to have made qualified investments cumulatively equal to one hundred percent of the certified capital allocated to its certified investors on such allocation date within the period ending:

(A) Twelve years after an allocation date, the percentage reported to the division of housing in section 10-3.5-108 (3) (b) shall equal sixty percent.

(B) Sixteen years after an allocation date, the percentage reported to the division of housing in section 10-3.5-108 (3) (b) shall equal one hundred percent, and the economic development commission shall have the authority over all monetary and investment assets of the certified capital company, including, but not limited to, the ability to select a new manager for all future investments of the certified capital company's assets.

(b) Any material violation of section 10-3.5-107 shall be grounds for decertification of the certified capital company, assessment of an administrative fine determined by the office by rule, or both. Any material violation of this article occurring on or after May 27, 2004, shall be grounds for assessment of an administrative fine pursuant to a schedule determined by the office by rule. Violations involving a use of funds that is unauthorized under this article shall require the repayment or reinvestment of the funds, and fines for such violations shall not exceed an amount equal to the amount of funds involved. Fines for violations not involving the misuse of funds shall not exceed one hundred thousand dollars. If the office determines that a certified capital company is not in compliance with the requirements referenced in this paragraph (b), it shall, by written notice, inform the officers of the certified capital company that the certified capital company may be subject to decertification, or the assessment of a fine as allowed by this paragraph (b), one hundred twenty days after the date of mailing of the notice unless the deficiencies are corrected and the certified capital company is again in compliance with all requirements for certification.

(c) (I) For the purpose of determining compliance with this article, including all requirements for distributions and certification, regardless of any claim that such records or operations are confidential or otherwise exempt from inspection, the office may, upon reasonable notice, inspect the records and operations of:

(A) A certified capital company; or

(B) If the information received pursuant to sub-subparagraph (A) of this subparagraph (I) is insufficient, a qualified business or qualified rural business.

(II) A record that is exempt from inspection pursuant to section 24-72-204, C.R.S., shall be exempt from inspection while in the custody of the office if the requirements of part 2 of article 72 of title 24, C.R.S., are complied with, and the office and its employees shall not disclose the confidential or exempt portions of the contents of any such record to anyone outside of the office unless disclosure of the confidential or exempt portions of the contents of such record is required to effectuate final administrative action against a certified capital company pursuant to this section.

(3) At the end of the one-hundred-twenty-day period provided in subsection (2) of this section, if the certified capital company is still not in compliance with the requirements

referenced in paragraph (b) of subsection (2) of this section, the office may do either or both of the following, as appropriate:

(a) Send a notice of decertification to the certified capital company and to all other appropriate state agencies, including without limitation the division of insurance in the department of regulatory agencies;

(b) Assess an administrative fine pursuant to paragraph (b) of subsection (2) of this section against the certified capital company. The assessment shall occur only after the director of the office holds a hearing in accordance with section 24-4-105, C.R.S. Judicial review may be obtained in the court of appeals pursuant to section 24-4-106 (11), C.R.S. The office shall transfer any such fine that it receives to the state treasurer, who shall credit it to the general fund.

(4) Decertification of a certified capital company may cause the recapture of premium tax credits previously claimed and the forfeiture of future premium tax credits to be claimed by certified investors with respect to such certified capital company, as follows:

(a) Decertification of a certified capital company within three years after an allocation date shall cause the recapture of all premium tax credits allocated to its certified investors on such allocation date that were previously claimed and the forfeiture of all premium tax credits allocated to its certified investors on such allocation date that are still to be claimed by certified investors with respect to such certified capital company.

(b) When a certified capital company meets all requirements for continued certification under section 10-3.5-107 (1) (a) with respect to certified capital allocated on a particular allocation date and subsequently fails to meet the requirements for continued certification under the provisions of section 10-3.5-107 (1) (b) with respect to such certified capital, those premium tax credits allocated to the certified investors of the certified capital company on such allocation date that have been or will be taken by certified investors within three years after such allocation date shall not be subject to recapture or forfeiture, but all other premium tax credits allocated to the certified investors of the certified capital company on such allocation date that have been or will be taken by certified investors shall be subject to recapture or forfeiture.

(c) Once a certified capital company has met all requirements for continued certification under section 10-3.5-107 (1) with respect to certified capital allocated on a particular allocation date and is subsequently decertified, those premium tax credits allocated to the certified investors of the certified capital company on such allocation date that have been or will be taken by certified investors within five years after such allocation date shall not be subject to recapture or forfeiture. Those premium tax credits allocated to the certified investors of the certified capital company on such allocation date to be taken after the fifth anniversary of such allocation date shall be subject to forfeiture only if the certified capital company is decertified within five years after such allocation date.

(d) Once a certified capital company has invested an amount cumulatively equal to one hundred percent of the certified capital allocated to its certified investors on a particular allocation date in qualified investments, all premium tax credits allocated to such certified investors on such allocation date that were claimed or remain to be claimed by its certified investors are no longer subject to recapture or forfeiture.

(5) Once a certified capital company has invested an amount cumulatively equal to one hundred percent of its certified capital in qualified investments and complied with sections 10-3.5-107 (3) (a) and 10-3.5-108 (2) (a) (I) (B), the certified capital company shall no longer be subject to regulation by the office except insofar as is necessary to oversee the distributions made pursuant to section 10-3.5-108 (3) (b).

(6) The office shall send written notice to the address of each certified investor whose premium tax credit has been subject to recapture or forfeiture, using the address shown on the most recent premium tax filing.

(7) The office shall have the authority to waive any recapture or forfeiture of credits if, after considering all facts and circumstances, it determines that such waiver will have the effect of furthering the economic development of the state.

**Source:** L. 2001: Entire article added, p. 1538, § 1, effective June 9. L. 2004: (2), (3), and (5) amended, p. 1248, § 6, effective May 27.



**10-3.5-110. Transferability.** The premium tax credit established pursuant to this article may be transferred or sold. The office shall promulgate rules to facilitate the transfer or sale of such premium tax credits. A transfer or sale shall not affect the time schedule for taking the premium tax credit as provided in this article. Any premium tax credits recaptured pursuant to section 10-3.5-109 shall be the liability of the taxpayer who actually claimed the premium tax credits.

**Source: L. 2001:** Entire article added, p. 1539, § 1, effective June 9.

PROPERTY AND CASUALTY INSURANCE

ARTICLE 4

Property and Casualty Insurance

**Law reviews:** For article, “Property Insurance”, see 16 Colo. Law. 1828 (1987).

PART 1		ously provided in certain policies of insurance.	
GENERAL		10-4-110.6.	Homeowner’s insurance - definition.
10-4-101.	Legislative declaration.	10-4-110.7.	Cancellation or nonrenewal - homeowner’s insurance policies.
10-4-102.	Federal “voluntary fair access to insurance required, property insurance program” - state qualification.	10-4-110.8.	Homeowner’s insurance - prohibited practices - definitions.
10-4-103.	Voluntary partial payment of liability claims without admission of liability.	10-4-110.9.	Fire insurance - issuance and renewal of policies within federally designated disaster areas.
10-4-104.	Competency of minor to contract for insurance - nonavoidance.	10-4-111.	Summary disclosure forms required.
10-4-105.	Valuation of bonds and policies other than life.	10-4-112.	Property damage - time of payment.
10-4-106.	Assigned risks.	10-4-113.	Exemptions.
10-4-107.	Cancellation of medical malpractice policies.	10-4-114.	Requirements on hazard insurance coverage for loans secured by real property.
10-4-108.	Notice.	10-4-115.	Private utilization review.
10-4-109.	Nonrenewal of medical malpractice policies.	10-4-116.	Use of credit information.
10-4-109.5.	Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided in medical malpractice policies.	10-4-117.	Loss history information report - notice to insured - definition.
10-4-109.7.	Notice of intent prior to cancellation of certain policies of insurance.	10-4-118.	Severability.
10-4-110.	Notice of intent prior to nonrenewal of certain policies of insurance.	10-4-119.	Monthly and electronic payment of premiums.
10-4-110.3.	Exclusions where claim involves sexual misconduct - void.	10-4-120.	Unfair or discriminatory trade practices - legislative declaration.
10-4-110.4.	Exclusion - claims involving loss in progress not known to insured.	PART 2	
10-4-110.5.	Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided in certain policies of insurance.	FIRE, MARINE, AND INLAND MARINE INSURANCE - RATES AND RATING ORGANIZATIONS	
		10-4-201 to 10-4-217.	(Repealed)

## PART 3

BONDS EXECUTED BY QUALIFIED  
SURETY COMPANIES

- 10-4-301. Bond executed by surety company.
- 10-4-302. Release of surety - other security.
- 10-4-303. Application for release of surety - refund.
- 10-4-304. Place of deposit.
- 10-4-305. Bond part of expense.

## PART 4

## RATE REGULATION

- 10-4-401. Purpose - applicability.
- 10-4-402. Definitions.
- 10-4-403. Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation.
- 10-4-404. Rate administration.
- 10-4-404.5. Rating plans - property and casualty type II insurers - rules.
- 10-4-404.6. Legislative declaration - obtaining information of impact of changes in the civil justice system. (Repealed)
- 10-4-405. Filing of rating information - certain coverages.
- 10-4-406. Review of filings - certain coverages.
- 10-4-407. Hearings.
- 10-4-408. Rating organization - study of workers' compensation rates - premium reductions - adoption of rules.
- 10-4-409. Rates furnished - cooperation among organizations.
- 10-4-410. Advisory organizations.
- 10-4-411. Joint underwriting.
- 10-4-412. Assigned risk motor vehicle insurance.
- 10-4-413. Records required to be maintained.
- 10-4-414. Examinations.
- 10-4-415. Prohibition against anticompetitive behavior.
- 10-4-416. Prohibiting changes in rates or coverages.
- 10-4-417. False or misleading information.
- 10-4-418. Enforcement procedures - penalties.
- 10-4-419. Claims-made policy forms.
- 10-4-420. Risk management procedures.
- 10-4-421. Notice of rate increases and decreases.

## PART 5

COLORADO INSURANCE GUARANTY  
ASSOCIATION ACT

- 10-4-501. Short title.
- 10-4-502. Legislative declaration.
- 10-4-503. Definitions.
- 10-4-504. Scope.
- 10-4-505. Construction.
- 10-4-506. Colorado insurance guaranty association.
- 10-4-507. Board of directors.
- 10-4-508. Powers and duties of association.
- 10-4-508.5. Aggregate liability of association.
- 10-4-509. Plan of operation.
- 10-4-510. Duties and powers of commissioner.
- 10-4-511. Effect of paid claims.
- 10-4-512. Nonduplication of recovery.
- 10-4-513. Prevention of insolvencies.
- 10-4-514. Examination of association.
- 10-4-515. Tax exemption.
- 10-4-516. Recognition of assessments in rates.
- 10-4-517. Immunity.
- 10-4-518. Stay of proceedings.
- 10-4-519. Termination - distribution of funds.
- 10-4-520. Advertising.

## PART 6

AUTOMOBILE INSURANCE POLICY -  
REGULATIONS

- 10-4-601. Definitions.
- 10-4-601.5. Administrative authority.
- 10-4-602. Basis for cancellation.
- 10-4-603. Notice.
- 10-4-604. Nonrenewal.
- 10-4-604.5. Issuance or renewal of insurance policies - proof of insurance provided by certificate, card, or other media.
- 10-4-605. Proof of notice.
- 10-4-606. Further notice.
- 10-4-607. Immunity.
- 10-4-608. Exemptions.
- 10-4-609. Insurance protection against uninsured motorists - applicability.
- 10-4-610. Property damage protection against uninsured motorists.
- 10-4-611. Elimination of discounts - damage by uninsured motorist.
- 10-4-612. Study concerning implementation of proof of insurance. (Repealed)
- 10-4-613. Glass repair and replacement.
- 10-4-614. Inflatable restraint systems - re-



	placement - verification of claims.	10-4-642.	Prompt payment of direct benefits - legislative declaration - definitions.
10-4-615.	Motorist insurance identification database program - reporting required - fine.	10-4-643.	Electronic claim forms - rules.
10-4-616.	Disclosure of credit reports.		PART 7
10-4-617.	Insurers - biannual fee - auto theft prevention authority.		MOTOR VEHICLE ("NO-FAULT") INSURANCE
10-4-618.	Unfair or discriminatory trade practices - legislative declaration. (Repealed)	10-4-701 to 10-4-726.	(Repealed)
10-4-619.	Coverage compulsory.		PART 8
10-4-620.	Required coverage.		MEDICAL LIABILITY EXTRAORDINARY LOSS FUND
10-4-621.	Required coverages are minimum.		
10-4-622.	Required provision for intra-state and interstate operation.	10-4-801 to 10-4-808.	(Repealed)
10-4-623.	Conditions and exclusions.		PART 9
10-4-624.	Self-insurers.		MEDICAL MALPRACTICE INSURANCE - JOINT UNDERWRITING ASSOCIATION
10-4-625.	Premium payments.		
10-4-626.	Prohibited reasons for nonrenewal or refusal to write policy of automobile insurance applicable to this part 6.	10-4-901 to 10-4-913.	(Repealed)
10-4-627.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.		PART 10
10-4-628.	Refusal to write - changes in - cancellation - nonrenewal of policies prohibited.		FRAUDULENT CLAIMS AND ARSON INFORMATION REPORTING ACT
10-4-629.	Cancellation - renewal - reclassification.	10-4-1001.	Short title.
10-4-630.	Exclusion of named driver.	10-4-1002.	Definitions.
10-4-631.	Insurers to file rate schedule.	10-4-1003.	Disclosure of information.
10-4-632.	Reduction in rates for drivers aged fifty-five years or older who complete driver's education course - legislative declaration.	10-4-1004.	Evidence - confidential.
		10-4-1005.	Immunity.
		10-4-1006.	Enforcement.
		10-4-1007.	Penalty.
10-4-633.	Certification of policy and notice forms.	10-4-1008.	Municipal ordinances - concurrent jurisdiction - common law.
10-4-633.5.	Automobile insurance policies - plain language required - rules.	10-4-1009.	Continuing duties of insurers - unfair claim settlement practices.
10-4-634.	Assignment of payment for covered benefits.		PART 11
10-4-635.	Medical payments coverage - definitions.		COMMERCIAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION
10-4-636.	Disclosure requirements for automobile insurance products offered - rules.	10-4-1101 to 10-4-1114.	(Repealed)
10-4-637.	No discrimination by profession.		PART 12
10-4-638.	Retroactive adjustment of health care service claims.		TRANSACTION OF BUSINESS WITH PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS
10-4-639.	Claims practices for property damage.		
10-4-640.	Operator's policy of insurance.	10-4-1201.	Definitions.
10-4-641.	Rules - medical payments coverage.	10-4-1202.	Minimum standards.

- 10-4-1203. Disclosure.
- 10-4-1204. Penalties.
- 10-4-1205. Applicability.
- 10-4-1206. Effective date.

## PART 14

EXEMPTION FROM RATE AND  
APPROVAL REQUIREMENTS FOR  
INSURERS PROVIDING COVERAGE TO  
EXEMPT COMMERCIAL  
POLICYHOLDERS

## PART 13

BLACK LUNG DISEASE INSURANCE  
JOINT UNDERWRITING ASSOCIATION

- 10-4-1301. Legislative declaration.
- 10-4-1302. Definitions.
- 10-4-1303. Temporary joint underwriting association.
- 10-4-1304. Board of directors - authority.
- 10-4-1305. Plan of operation - annual certification.
- 10-4-1306. Deficits - assessment - rebate of surplus.
- 10-4-1307. Annual statements.
- 10-4-1308. Examinations.
- 10-4-1309. Legislative declaration - authority of commissioner - emergency rules - judicial review.
- 10-4-1310. Privileged communications.
- 10-4-1311. Tax exemption.

- 10-4-1401. Legislative declaration.
- 10-4-1402. Rules.
- 10-4-1403. Exemption from rate filing, approval, and form certification requirements.
- 10-4-1404. Multistate insurance risks - choice of law.

## PART 15

## PORTABLE ELECTRONICS INSURANCE

- 10-4-1501. Definitions.
- 10-4-1502. Licensure of vendors.
- 10-4-1503. Requirements for sale of portable electronics insurance.
- 10-4-1504. Authority of vendors of portable electronics.
- 10-4-1505. Suspension or revocation of license.
- 10-4-1506. Termination of portable electronics insurance.
- 10-4-1507. Application for license - fees.

## PART 1

## GENERAL

**10-4-101. Legislative declaration.** The general assembly declares that the health, welfare, and safety of the people of the state of Colorado would be enhanced by the expeditious handling of liability claims. The general assembly further declares that the handling of such claims would be expedited if voluntary payment by one person, or on his behalf to an injured person, could not be construed as an admission of fault or liability as to any claim arising out of the same occurrence.

**Source:** L. 67: p. 972, § 1. C.R.S. 1963: § 72-1-58.

**10-4-102. Federal "voluntary fair access to insurance required, property insurance program" - state qualification.** In order that this state may share in the provisions of 12 U.S.C. 1749bbb, which makes available to states that qualify with its provisions a federal program of reinsurance against abnormally high property insurance losses resulting from riots and other civic commotions, the commissioner is authorized to adopt necessary regulations to qualify this state with the provisions of said federal law, but any regulations so authorized by this section shall otherwise comply with the laws of this state and be subject thereto, and such plan shall be in all respects voluntary.

**Source:** L. 69: p. 512, § 1. C.R.S. 1963: § 72-1-61.

**10-4-103. Voluntary partial payment of liability claims without admission of liability.** No voluntary partial payment of a claim against any person based on alleged liability of that person for injury or property damage arising out of any occurrence shall be construed as an admission of fault or liability, or as a waiver or release of claim, by the



person receiving such payment. Such payment, moreover, shall not be admissible in any action, as evidence, for the purpose of determining the amount of any judgment with respect to the same parties as to such occurrence. Upon settlement of the claim, the parties may make any agreement they so desire in respect to all such voluntary partial payments. After entry of judgment, any such payment shall be treated as a credit against the judgment and is deductible from the amount of the judgment. If, after partial voluntary payments are made as provided for in this section, it is determined by final judgment of a court of competent jurisdiction that the payor is liable for an amount less than the voluntary payments already made, the payor shall have no right of action for the recovery of amounts by which the voluntary payments exceed the final judgment. No voluntary partial payments shall be construed to reduce the amount of damages which may be pleaded and proved in a court proceeding between the parties.

**Source:** L. 67: p. 972, § 2. C.R.S. 1963: § 72-1-59.

#### ANNOTATION

**Law reviews.** For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989).

**10-4-104. Competency of minor to contract for insurance - nonavoidance.** Any minor of the age of sixteen years or over may, notwithstanding his minority, contract for insurance upon his own property or liabilities. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any such contract as might be exercised by a person of full legal age and may at any time surrender his interest in any such contracts and give valid discharge for any benefits accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract nor to rescind, avoid, or repudiate any exercise of a right or privilege thereunder.

**Source:** L. 63: p. 573, § 1. C.R.S. 1963: § 72-1-54.

**Cross references:** For competency of persons to enter into any legal contractual obligation, see § 13-22-101.

**10-4-105. Valuation of bonds and policies other than life.** For the purpose of establishing the liability of companies doing a surety business and of insurance companies other than life, the amount required to safely reinsure all outstanding risks shall be estimated by taking fifty percent of the gross annual premiums on all surety bonds, risks, and policies in force that have less than one year to run, and pro rata of all gross premiums on risks that have more than one year to run.

**Source:** L. 13: p. 350, § 42. C.L. § 2515. CSA: C. 87, § 56. CRS 53: § 72-3-2. C.R.S. 1963: § 72-3-2.

**10-4-106. Assigned risks.** (1) The commissioner may, after consultation with the insurers licensed to write mortgage guaranty insurance in this state, establish or approve a reasonable plan, and rules governing the same, for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods, and, when such plan has been approved, all such insurers may subscribe thereto and participate therein. Any applicant for such insurance, any person insured under such plan, and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan.

(2) Insurance provided under this section shall be provided only for the purposes listed in article 49 of title 7, C.R.S., and may be made in cooperation with the corporation established in said article.

**Source: L. 75:** Entire section added, p. 270, § 2, effective June 29.

**10-4-107. Cancellation of medical malpractice policies.** (1) A notice of cancellation of a medical malpractice policy shall be valid only if it is based on one or more of the following reasons:

- (a) Nonpayment of premiums; or
- (b) The license of the insured health care provider has been suspended or revoked by the appropriate state regulatory authority; or
- (c) The insured knowingly made a false statement on the application for insurance; or
- (d) There has been a substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the insured has notified the insurer of the change and the insurer accepts such change.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time the notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(3) This section shall not apply to nonrenewal of a policy.

(4) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source: L. 76:** Entire section added, p. 365, § 1, effective May 21. **L. 86:** (1)(c) amended and (1)(d) added, p. 572, § 1, effective July 1. **L. 99:** (4) added, p. 389, § 12, effective January 15, 2000.

**10-4-108. Notice.** (1) No notice of the cancellation of a policy to which section 10-4-107 applies shall be valid unless mailed or delivered by the insurer to the named insured at least ninety days prior to the effective date of cancellation; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given. Unless the reasons of the company are included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that, upon written request of the named insured mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, the insurer will specify the reasons for such cancellation.

(2) When the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall, upon written request of the named insured mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) This section shall not apply to nonrenewal of a policy.

(4) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source: L. 76:** Entire section added, p. 365, § 1, effective May 21. **L. 86:** (1) amended, p. 572, § 2, effective July 1. **L. 99:** (4) added, p. 389, § 13, effective January 15, 2000.

**10-4-109. Nonrenewal of medical malpractice policies.** (1) No insurer shall refuse to renew a policy of medical malpractice insurance unless such insurer or its agent mails or delivers to the named insured, at the last address shown in the insurer's records, at least ninety days' advance notice of its intention not to renew. This section shall not apply:

- (a) If the insurer has already manifested its willingness to renew;
- (b) Repealed.



- (c) If the insured fails to pay any premium deposit required by the insurer for renewal.
- (2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other malpractice liability insurance policy with respect to the particular insured, if such policy has substantially the same limits and provisions of coverage.
- (3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.
- (4) In the event an insurer refuses to renew, the insured may, by written request, demand a written notification of the reasons for nonrenewal. Such notification shall be given the insured within twenty days after receipt of such request.
- (5) Any statement of reasons contained in the notice pursuant to subsection (4) of this section shall be privileged and shall not constitute grounds for any action against the insurer or its representatives or any person who in good faith furnished to the insurer the information upon which the statement is based.
- (6) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 76: Entire section added, p. 365, § 1, effective May 21. L. 86: IP(1) amended and (1)(b) repealed, pp. 573, 575, §§ 3, 7, effective July 1. L. 99: (6) added, p. 389, § 14, effective January 15, 2000.

#### ANNOTATION

**Effect of notice requirements on duty of insurer to renew policies.** This section requires that insurer give at least ninety days' advance notice of its intention not to renew a policy. Bad faith cause of action can not be based on insurer's nonrenewal of policies where this section and other policy terms provided that insurer had no duty to renew policies. *Ballow v. PHICO Ins. Co.*, 841 P.2d 344 (Colo. App. 1992).

**10-4-109.5. Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided in medical malpractice policies.** (1) No insurer shall increase the premium unilaterally or decrease the coverage benefits previously provided as contained in a medical malpractice policy unless such insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least ninety days' advance notice, accompanied by the reason therefor, of the company's intention to increase the premium unilaterally or decrease the coverage benefits provided on renewal.

(2) A notice of a decrease in coverage benefits previously provided pursuant to this section shall be valid only if it sets forth the reason for the decrease and is based on one or more of the following reasons:

- (a) Nonpayment of premium;
- (b) A false statement knowingly made by the insured on the application for insurance;
- (c) A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the insured has notified the insurer of the change and the insurer accepts such change.

(3) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 86: Entire section added, p. 573, § 4, effective July 1. L. 99: (3) added, p. 389, § 15, effective January 15, 2000.

**10-4-109.7. Notice of intent prior to cancellation of certain policies of insurance.** (1) No insurer shall cancel a policy of insurance that provides coverages on commercial exposures such as general comprehensive liability, municipal liability, automobile liability and physical damage, fidelity and surety, fire and allied lines, inland marine, errors and

omissions, excess liability, products liability, police liability, professional liability, or false arrest insurance unless such insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least forty-five days in advance a notice of the company's intention to cancel; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given.

(2) A notice of cancellation pursuant to this section shall be valid only if it is based on one or more of the following reasons:

- (a) Nonpayment of premium;
- (b) A false statement knowingly made by the insured on the application for insurance;
- (c) A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the insured has notified the insurer of the change and the insurer accepts such change.

(3) This section shall not apply to insurance companies authorized to write surplus line insurance in Colorado.

(4) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** **L. 86:** Entire section added, p. 573, § 4, effective July 1. **L. 87:** (1) amended and (3) added, p. 425, § 2, effective May 1. **L. 99:** (4) added, p. 389, § 16, effective January 15, 2000.

#### **10-4-110. Notice of intent prior to nonrenewal of certain policies of insurance.**

(1) No insurer shall refuse to renew a policy of insurance that provides coverages on commercial exposures such as general comprehensive liability, municipal liability, automobile liability and physical damage, fidelity and surety, fire and allied lines, inland marine, errors and omissions, excess liability, products liability, police liability, professional liability, or false arrest insurance unless such insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least forty-five days in advance a notice of the company's intention not to renew.

(2) Repealed.

(3) The provisions of this section shall not apply:

- (a) Repealed.
- (b) If the insured fails to pay any premium deposit required by the insurer for renewal;
- (c) To any policy or coverage which has been in effect less than sixty days, unless it is a renewal policy.

(4) An insurer's failure to mail notice of intent shall be considered a manifestation of its willingness to renew.

(5) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(6) This section shall not apply to insurance companies authorized to write surplus line insurance in Colorado.

(7) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** **L. 77:** Entire section added, p. 511, § 1, effective July 1. **L. 86:** (1) amended and (2) and (3)(a) repealed, pp. 574, 575, §§ 5, 7, effective July 1. **L. 87:** (1) amended and (6) added, p. 426, § 3, effective May 1. **L. 99:** (7) added, p. 390, § 17, effective January 15, 2000.

**10-4-110.3. Exclusions where claim involves sexual misconduct - void.** (1) No insurer, in a policy of professional malpractice insurance, shall attempt to nullify or limit its stated liability with regard to claims not relating to sexual misconduct in cases where:

- (a) There is an allegation or proof of a claim of sexual misconduct by the insured; and



(b) The policy requires aggregation of all damages under the liability limit for sexual misconduct.

(2) Any policy provision that violates subsection (1) of this section is hereby declared contrary to public policy and is void and unenforceable.

(3) This section shall not apply to nonadmitted insurers approved pursuant to article 5 of this title.

**Source: L. 95:** Entire section added, p. 865, § 1, effective May 24.

#### ANNOTATION

**Unambiguous exclusion from insurance policy for sexual misconduct of perpetrator did not violate the public policy** concerns that gave rise to this section where such insurance

policy did not require aggregation of claims or subject claims unrelated to sexual misconduct to a smaller liability limit. *Church Mut. Ins. Co. v. Klein*, 940 P.2d 1001 (Colo. App. 1996).

#### **10-4-110.4. Exclusion - claims involving loss in progress not known to insured.**

(1) A provision in a liability insurance policy issued to a construction professional excluding or limiting coverage for one or more claims arising from bodily injury, property damage, advertising injury, or personal injury that occurs before the policy's inception date and that continues, worsens, or progresses when the policy is in effect is void and unenforceable if the exclusion or limitation applies to an injury or damage that was unknown to the insured at the policy's inception date.

(2) Any provision in an insurance policy issued in violation of this section is void and unenforceable as against public policy. A court shall construe an insurance policy containing a provision that is unenforceable under this section as if the provision was not a part of the policy when the policy was issued.

(3) This section applies only to an insurance policy that covers occurrences of damage or injury during the policy period and that insures a construction professional for liability arising from construction-related work.

**Source: L. 2010:** Entire section added, (HB 10-1394), ch. 253, p. 1128, § 2, effective May 21.

**Editor's note:** Section 3 of chapter 253, Session Laws of Colorado 2010, provides that the act adding this section applies to all insurance policies currently in existence or issued on or after May 21, 2010.

#### ANNOTATION

**Law reviews.** For article, "H.B. 10-1394: New Law Governing Insurance Coverage for

Construction Defect Claims", see 39 Colo. Law. 89 (August 2010).

#### **10-4-110.5. Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided in certain policies of insurance.**

(1) No insurer shall increase the premium unilaterally or decrease the coverage benefits on renewal of a policy of insurance that provides coverages on commercial exposures such as general comprehensive liability, municipal liability, automobile liability and physical damage, fidelity and surety, fire and allied lines, inland marine, errors and omissions, excess liability, products liability, police liability, professional liability, or false arrest insurance unless the insurer mails by first-class mail to the named insured, at the last address shown in the insurer's records, at least forty-five days in advance a notice, accompanied by the reasons therefor, stating the renewal terms and the amount of premium due. If the insurer fails to furnish the renewal terms and the statement of the amount of premium due at least forty-five days prior to the expiration date of the policy, the insurer shall automatically extend the existing policy for a period of forty-five days and the premium for this extended period shall be prorated based on the premium applicable to the existing policy. If the insurer fails to meet the

requirements of this section prior to the expiration date of the existing policy, the insurer shall be deemed to have renewed the insured's policy for an identical policy period at the same terms, conditions, and premium as the existing policy.

(2) A notice of a decrease in coverage benefits during the term of a policy of insurance identified in subsection (1) of this section shall be valid only if it sets forth the reason for the decrease and is based on one or more of the following reasons:

- (a) Nonpayment of premium;
- (b) A false statement knowingly made by the insured on the application for insurance;
- (c) A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the insured has notified the insurer of the change and the insurer accepts such change.

(3) This section shall not apply to insurance companies authorized to write surplus line insurance in Colorado.

**Source:** L. 86: Entire section added, p. 574, § 6, effective July 1. L. 87: (1) amended and (3) added, p. 426, § 4, effective May 1.

#### ANNOTATION

**Plain language of notice provision in subsection (1) reveals that purpose of statute is to provide 45 days' notice to insured of insurer's unilateral intent to increase premium or decrease coverage upon renewal of existing policy.** Accordingly, subsection (1) either extends or renews the existing policy if insurer provides late or inadequate notice to insured. *Granite State Ins. Co. v. Ken Caryl Ranch Master Ass'n*, 183 P.3d 563 (Colo. 2008).

**Under plain language of subsection (1), first sentence establishes notice requirements, and second and third sentences provide distinct remedies to insured if insurer fails to comply with notice requirements set forth in first sentence.** If insurer fails to provide adequate notice at least 45 days before expiration of existing policy, second sentence automatically extends policy for 45 days at prorated premium. If insurer fails to meet "requirements" of notice statute before expiration of existing policy, third sentence imposes full-term renewal of policy under same terms, conditions, and premium as existing policy. *Granite State Ins. Co. v. Ken Caryl Ranch Master Ass'n*, 183 P.3d 563 (Colo. 2008).

**First sentence of notice statute sets forth more than one requirement.** First sentence requires notice to be: (1) Sent by first-class mail to insured's last known address; (2) sent at least 45 days before expiration of existing policy; (3) accompanied by reasons for change in policy

premiums or coverage; and (4) accompanied by renewal terms and amount of premium due. Use of plural term "requirements" in third sentence refers to notice requirements in first sentence, imposing full-term renewal of existing policy if insurer fails to fulfill notice requirements before expiration of policy. *Granite State Ins. Co. v. Ken Caryl Ranch Master Ass'n*, 183 P.3d 563 (Colo. 2008).

Where insurer provided late but adequate notice, 5 days before expiration of policy, of reduced coverage under renewal policy, remedy in second sentence of subsection (1) applied to automatically extend existing policy for 45 days at prorated premium. Since insurer adequately notified insured of reduced coverage before expiration of policy, full-term renewal remedy in third sentence of subsection (1) was not triggered. *Granite State Ins. Co. v. Ken Caryl Ranch Master Ass'n*, 183 P.3d 536 (Colo. 2008).

**The notice requirement of this section does not apply to a public entity self-insurance pool.** Under the plain language of § 24-10-115.5, public entity self-insurance pools, such as the Colorado intergovernmental risk sharing agency, are not to be construed to be insurance companies and are not otherwise subject to state laws regulating insurance companies except §§ 10-1-203, 10-1-204 (1) to (5) and (10). *City of Arvada v. Colo. Intergovernmental Risk Sharing Agency*, 988 P.2d 184 (Colo. App. 1999), *aff'd*, 19 P.3d 10 (Colo. 2001).

**10-4-110.6. Homeowner's insurance - definition.** For the purposes of this article, "homeowner's insurance" means insurance that covers damage or loss to all types of homes, including, but not limited to, site-built homes, manufactured homes, factory-built homes, and mobile homes.

**Source:** L. 2004: Entire section added, p. 1972, § 2, effective August 4; entire section added, p. 1981, § 2, effective January 1, 2005.



**10-4-110.7. Cancellation or nonrenewal - homeowner's insurance policies.**

(1) (a) If an insurer issues a binder of insurance during a period in which the insurer assesses the risk related to an individual's real and personal property for the purposes of homeowner's insurance, the insurer shall provide notice to the potential insured that the documents are only a binder and subject to cancellation.

(b) The commissioner may promulgate a rule or issue a bulletin concerning disclosure requirements for a binder of insurance for homeowner's insurance.

(2) (a) If an insurer uses underwriting criteria based on an individual's credit score, the claims history of the property, or the claims history of the applicant, the insurer shall notify the applicant of the use of such criteria during the application process.

(b) If an insurer uses claims experience for the property and such claims history results in an adverse action to the applicant or policyholder, the insurer shall disclose to the applicant or policyholder the specific claim information that resulted in the adverse action.

(3) No insurer shall cancel or refuse to renew a policy of homeowner's insurance unless such insurer mails, by first-class mail to the named insured, at the last address shown in the insurer's records, at least thirty days in advance, a notice of its intended action pursuant to section 10-4-110 that specifically states the reasons for proposing to take such action pursuant to section 10-4-110; except that, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reasons therefor shall be given.

(4) An insurer offering homeowner's insurance in this state shall file with the commissioner the underwriting methodologies used by the insurer. Such underwriting methodologies are not public records and are exempted from article 72 of title 24, C.R.S., and are proprietary and not subject to public examination; except that the commissioner may use information from the underwriting methodologies filed pursuant to this subsection (4) that does not identify a specific insurer for consumer information publications concerning homeowner's insurance.

(5) If an insurer issues a binder or a policy of insurance during a period in which the insurer assesses the risk related to an individual's real and personal property for the purposes of homeowner's insurance, the insurer shall provide notice to the potential insured that the documents are conditional and that the insurer has thirty business days, commencing on the effective date of the conditional coverage, to evaluate the issuance of a policy for homeowner's insurance. If the insurer refuses to issue a policy of homeowner's insurance or cancels a conditional policy that has been issued as of an effective date within this thirty-business-day period, the insurer shall notify the homeowner of the insurer's decision. If, prior to the expiration of the thirty-business-day period, the insurer obtains information showing an articulable and reasonable basis on which the insurer might be justified in cancelling coverage and the insurer believes that further investigation or repair of the property is necessary, the thirty-business-day period may be extended. The insurer shall complete any inspection associated with the underwriting of the new property within the thirty-business-day period.

**Source:** L. 87: Entire section added, p. 427, § 5, effective May 1. L. 2004: Entire section amended, p. 1971, § 1, effective August 4; entire section amended, p. 1980, § 1, effective January 1, 2005.

**Editor's note:** Amendments to this section by House Bill 04-1292 and House Bill 04-1236 were harmonized.

**10-4-110.8. Homeowner's insurance - prohibited practices - definitions.** (1) An insurer may not cancel or fail to renew coverage of an insured solely because the insured inquires about coverage for homeowner's insurance and the inquiry is not related to an actual claim to the property insured.

(2) An insurer may only provide information regarding claims to an entity that compiles or monitors personal claim or loss experience shared by insurers for underwriting or rating purposes.

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Claim" includes a demand for payment of a benefit by the insured, the payment of a covered benefit by an insurer, a loss reserve established by the insurer, a loss adjustment expense incurred by the insurer, or a payment made to the insured.

(b) "Inquiry" means a request for information regarding the terms, conditions, or coverages afforded under an insurance contract.

(4) Every insurer issuing a policy of homeowner's insurance shall comply with section 10-3-1104 (1) (h) and all other provisions of part 11 of article 3 of this title.

(5) (a) In a common interest community, as defined in section 38-33.3-103 (8), C.R.S., a unit owner may file a claim against the policy of the unit owner's association to the same extent, and with the same effect, as if the unit owner were a named insured if the following conditions are met:

(I) The unit owner has contacted the executive board or the association's managing agent in writing, and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim;

(II) The unit owner has given the association at least fifteen days to respond in writing, and, if so requested, has given the association's agent a reasonable opportunity to inspect the damage; and

(III) The subject matter of the claim falls within the association's insurance responsibilities.

(b) The association's insurer, when determining premiums to be charged to the association, shall not take into account any request by a unit owner for a clarification of coverage.

**Source: L. 2004:** Entire section added, p. 1972, § 3, effective August 4; entire section added, p. 1981, § 2, effective January 1, 2005. **L. 2005:** (3) and (4) amended and (5) added, p. 1390, § 20, effective January 1, 2006. **L. 2006:** (5) amended, p. 1226, § 16, effective May 26.

**10-4-110.9. Fire insurance - issuance and renewal of policies within federally designated disaster areas.** (1) No insurer shall refuse to issue a fire insurance policy for any property located within a federally designated disaster area, so designated because of wildfire, where such refusal is based on such property's zip code, county location, or distance from any wildfire. This section shall not apply to property that is located within an immediately threatened area as designated by the appropriate state, local, or federal official.

(2) An insurer shall not refuse to renew an existing fire insurance policy for property that is within an area that has been declared a federally designated disaster area for any reason that is related to wildfire. As a condition of such renewal, an insurer may require a property owner to take reasonable actions to reduce the risk of fire to such property.

(3) If a property owner refinances a mortgage on an insured property that falls within an area that has been declared a federally designated disaster area because of wildfire, the insurer of such property shall continue to provide coverage for the remaining term of the existing fire insurance policy, adjusted as required by the mortgage lender for any increase or decrease in the value of such property. Such required adjustment shall not conflict with the requirements of section 10-4-114.

(4) The commissioner of insurance may adopt rules as necessary for implementation of this section.

**Source: L. 2002, 3rd Ex. Sess.:** Entire section added, p. 50, § 1, effective July 18.

**10-4-111. Summary disclosure forms required.** (1) Every insurer issuing policies of dwelling fire insurance, homeowners insurance, or automobile insurance subject to the provisions of part 6 of this article shall, as a condition of doing business in this state, have on file for public inspection at the division a summary disclosure form that contains a simple explanation of the major coverages and exclusions of such policies of insurance together with a recitation of general factors considered in cancellation, nonrenewal, and increase in premium situations. Each summary disclosure form shall provide notice in bold



face letters that the policyholder should read the policy for complete details, and such disclosure form shall not be construed to replace any provision of the policy itself. In the event of any conflict between the policy and the disclosure form, the provisions of the policy shall prevail.

(2) Every insurer shall update disclosure forms periodically subject to changes in major coverages and exclusions of such policies of insurance and changes in factors considered in cancellation, nonrenewal, and increase in premium situations.

(3) Every insurer or its designated agent shall furnish the required disclosure form to applicants for insurance coverage at the time of the initial insurance purchase and thereafter on any renewal policy when there are changes in major coverages and exclusions or changes in factors considered in cancellation, nonrenewal, and increase in premium situations.

(4) Any insurer who violates the provisions of subsection (1) of this section shall be deemed to have engaged in unfair or deceptive acts or practices prohibited by section 10-3-1104 (1) (a) (I) and shall be subject to the penalties provided in section 10-3-1108 and 10-3-1109.

(5) In addition to the disclosure requirements in this section, every insurer or producer who issues automobile insurance policies pursuant to part 6 of this article shall comply with the disclosure requirements in section 10-4-636.

**Source:** **L. 79:** Entire section added, p. 360, § 6, effective July 1. **L. 92:** Entire section amended, p. 1557, § 55, effective May 20. **L. 2006:** (1) amended, p. 1490, § 11, effective June 1; (1) amended and (5) added, p. 37, § 1, effective January 1, 2007.

**Editor's note:** Amendments to subsection (1) by House Bill 06-1391 and House Bill 06-1030 were harmonized.

## ANNOTATION

**Homeowners' policy, which excluded coverage for intentional conduct of "any insured",** did not provide coverage for property damage intentionally caused by the insureds'

minor son, where policy defined "insured" to include son. *Chacon v. Am. Family Mut. Ins. Co.*, 762 P.2d 732 (Colo. App. 1988).

**10-4-112. Property damage - time of payment.** (1) After an insurer has issued a draft or check to a loss payee and the insured under the terms of a property damage policy for the repair of property damage to a one- to four-family dwelling unit or an owner-operated commercial property when the mortgage or deed of trust secures a debt not in excess of two hundred thousand dollars, such draft or check, if satisfactory in an amount to the insured, shall be properly endorsed by the insured in favor of the loss payee and delivered to the loss payee.

(2) If the draft or check is for the full amount of the loss and is in an amount of one thousand dollars or less, the loss payee shall return the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee, unless the evidence of the debt or the instrument given as security for the debt is in default.

(3) If the draft or check is in an amount in excess of one thousand dollars, or is a partial payment on a loss in an amount in excess of one thousand dollars, the loss payee shall either:

(a) Send the draft or check, properly endorsed, to the insured within ten days after the date of its receipt by the loss payee;

(b) Process the draft or check for collection or deposit, except as provided in paragraph (c) of this subsection (3). Any loss payee holding funds under this paragraph (b), upon its approval of contracts or plans for the completion of repairs, shall make reasonable advances or progress payments as appropriate to be applied to the completion of repairs and shall be entitled to require appropriate lien waivers and to inspect the repairs during the progress of the repairs. The loss payee shall be entitled to retain up to fifteen percent of the amount of

the draft or check as retainage until completion and inspection, satisfactory to the insured, of the work.

(c) Process the draft or check for collection or deposit. Any loss payee holding funds under this paragraph (c) shall hold such funds for the payment of the cost of repairs unless any one of the following circumstances is present:

(I) The evidence of the debt or the instrument given as security for the debt is in default. If the default is a result of failure to make payments in a timely manner as required by the evidence of debt or the instrument securing the debt, the loss payee may apply an amount of such proceeds sufficient to cure the default, including taxes, penalties, and late charges, and hold the balance for the cost of repairs, pursuant to paragraph (b) of this subsection (3).

(II) The restoration of the property would violate local, state, or federal laws or regulations;

(III) The property cannot reasonably be restored to its condition prior to the loss at a cost of not to exceed the amount of the draft, reduced by an amount applied to cure a default pursuant to subparagraph (I) of this paragraph (c).

(d) Advise the insurer and insured that it is not satisfied with the amount of the draft or check and pursue a claim for the loss under the terms of the policy. Upon such notification the insured shall not be precluded from pursuing, either singly or jointly with the loss payee, a claim for the loss under the terms of the policy.

(4) Neither approval of contracts, plans for the completion of repairs, nor inspection of the work shall make the loss payee liable to any person for any improper, negligent, or unsatisfactory repairs.

**Source:** L. 86: Entire section added, p. 576, § 1, effective April 3.

#### ANNOTATION

**Law reviews.** For article, "The Standard Mortgage Clause", see 20 Colo. Law. 731 (1991).

**10-4-113. Exemptions.** (1) The commissioner shall have authority to grant reasonable exemptions from the provisions of sections 10-4-107, 10-4-108 (1), 10-4-109 (1), 10-4-109.5, 10-4-109.7, 10-4-110 (1), and 10-4-110.5 if compliance therewith is shown to be impracticable. Such exemptions may be granted to individual companies or by insurance line, type, or class and may be based on any of the following reasons:

(a) If the primary insurer, due to forces outside its control, has lost all or a significant portion of its reinsurance and the insurer can provide proof that the continuance of coverage or the continuance of the same premium and coverage would endanger the direct insurer's solvency;

(b) If a policy issued in this state covers risks with multistate locations, except with respect to coverages applicable to locations within this state;

(c) If the insurer is obligated and fails to send advance notice of cancellation or nonrenewal to any designated mortgagee or loss payee or motor carrier commission;

(d) If the insured has replaced his coverage or has specifically requested cancellation. The insurer must maintain in its file properly documented proof that termination was made at the request of the insured. This applies also to reduction in coverage specifically requested by the insured.

(e) If the policy has been in effect for less than sixty days at the time the notice is mailed or delivered, unless the policy is a renewal policy, and there has been a material misrepresentation or nondisclosure to the insurer of a material fact at the time of acceptance of the risk;

(f) If the policy is a policy written for a period of less than six months or a binder with a specific expiration date and the insured knows in advance that coverage will not be continued on expiration;

(g) If an insurer has become insolvent and cancellation is ordered by a rehabilitator or liquidator;



(h) If a risk is cancelled and rewritten with the same insurer in order to obtain common expiration dates;

(i) If a named insured fails to comply with loss control recommendations which the insured agreed would be implemented as a condition of issuance of the policy;

(j) Such other exemptions as the commissioner may determine are reasonable and necessary; or

(k) If the insurer is providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source: L. 86:** Entire section added, p. 578, § 1, effective July 1. **L. 99:** (1)(k) added, p. 390, § 18, effective January 15, 2000.

**10-4-114. Requirements on hazard insurance coverage for loans secured by real property.** (1) No lender shall require a borrower under a loan secured by real property to provide hazard insurance coverage on that property in an amount exceeding the replacement value of the improvements on the property.

(2) Any person harmed by a violation of this section shall be entitled to obtain injunctive relief and may recover damages and reasonable attorney fees and costs.

(3) A violation of this section does not affect the validity of the loan or the mortgage or deed of trust.

**Source: L. 88:** Entire section added, p. 403, § 2, effective April 29.

#### ANNOTATION

**Law reviews.** For article, "The Standard Mortgage Clause", see 20 Colo. Law. 731 (1991).

**10-4-115. Private utilization review.** (1) As used in this section, unless the context otherwise requires:

(a) "Private utilization review organization" means an entity, other than a hospital or public reviewer following federal guidelines, which conducts utilization review.

(b) "Utilization review" means an evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures, and facilities, but does not include any independent medical examination provided for in any policy of insurance.

(2) An insurance carrier regulated pursuant to the provisions of this article may contract with any private utilization review organization and receive from that private utilization review organization a utilization review opinion. If the insurance carrier relies on the opinion of the private utilization review organization resulting in a decision to not pay benefits that an appropriate fact finder later determines were due and owing, then the insurance carrier shall be responsible to pay the past due benefits in addition to interest and costs. Nothing in this subsection (2) shall be construed to affect or limit the commissioner's power to regulate under the provisions of section 10-3-1104 (1) (h), nor shall anything in this subsection (2) limit or affect the insured's remedies under part 6 of this article, or any common law remedy.

**Source: L. 93:** Entire section added, p. 493, § 1, effective April 26. **L. 2003:** (2) amended, p. 1571, § 6, effective July 1.

**10-4-116. Use of credit information.** (1) An insurer that offers personal lines of property and casualty insurance shall not:

(a) Use an insurance score that is calculated using income, gender, address, United States postal zip code, ethnic group, religion, marital status, or nationality of the consumer;

(b) Deny, cancel, or fail to renew a policy of personal lines of property and casualty insurance on the basis of credit information, without consideration of any other applicable

underwriting factor that is independent of credit information prohibited pursuant to paragraph (a) of this subsection (1);

(c) Base an insured's renewal rates for personal lines of property and casualty insurance upon credit information, without consideration of any other applicable factor independent of credit information;

(d) Take an adverse action against a consumer because he or she does not have a credit card account, without consideration of any other applicable factor independent of credit information;

(e) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal lines of property and casualty insurance issued in this state, unless the insurer does one of the following:

(I) Treats the consumer in a manner otherwise approved by the commissioner, if the insurer presents information that such an absence or inability relates to the risk for the insurer;

(II) Treats the consumer as if he or she had neutral credit information, as defined by the insurer; or

(III) Excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) Take an adverse action against a consumer based on credit information, unless the insurer obtains and uses a credit report issued or an insurance score calculated within ninety days before the date the policy is first written or renewal is issued;

(g) Use credit information unless, not later than every thirty-six months following the last time that the insurer obtained current information for the consumer, the insurer recalculates the consumer's insurance score or obtains an updated credit report. Notwithstanding any provision of this section to the contrary, an insurer:

(I) At annual renewal, upon the request of a consumer or the consumer's agent, shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer may recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once during a twelve-month period.

(II) May obtain current credit information upon a renewal before the thirty-sixth month of coverage, if obtaining current credit information is consistent with the insurer's underwriting guidelines;

(III) Notwithstanding subparagraph (I) of this paragraph (g), need not obtain current credit information for an insured if one of the following situations apply:

(A) The insurer is treating the insured in a manner otherwise approved by the commissioner;

(B) The insured is in the most-favorably-priced tier of the insurer, within a group of affiliated insurers; except that the insurer may order a credit report if ordering the credit report is consistent with its underwriting guidelines;

(C) Credit was not used for underwriting or rating the insured when the insured's initial policy of insurance was written; except that an insurer may use credit for underwriting or rating the insured upon renewal if the use of credit is consistent with its underwriting guidelines; or

(D) The insurer reevaluates the insured beginning no later than thirty-six months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(h) Use the following as a negative factor in an insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal lines of property and casualty insurance:

(I) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(II) Inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(III) Collection accounts with a medical industry code, if so identified on the consumer's credit report;



(IV) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the motor vehicle lending industry and made within thirty days after one another, unless only one inquiry is considered;

(V) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered;

(VI) Identity theft that may be sufficiently and independently corroborated;

(VII) Credit information adversely impacted by a dissolution of marriage or by the credit information of a former spouse.

(2) If it is determined through the dispute resolution process as set forth in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i (a) (5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of a determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and re-rate the consumer within thirty days after receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid a premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period.

(3) (a) If an insurer offering personal lines of property and casualty coverage uses credit information in underwriting or rating a consumer, the insurer or the producer shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. The disclosure shall be either in writing or in the same medium as the application for insurance is taken. The insurer may provide the disclosure statement required pursuant to this subsection (3) to an insured on a renewal policy, if the consumer has previously been provided a copy of the disclosure statement.

(b) Use of the following disclosure statement shall constitute compliance with the provisions of this subsection (3); except that an insurer may use different terms or phrases to communicate the same meaning:

**In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.**

(4) If an insurer takes an adverse action based upon credit information, the insurer shall meet the notice requirements of this subsection (4). Specifically, an insurer shall:

(a) Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681m (a); and

(b) Provide notification to the consumer explaining the reason for the adverse action. The reasons shall be provided in sufficiently clear and specific language so that a person may identify the basis for the insurer's decision to take adverse action. The notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this subsection (4). Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this subsection (4).

(5) An insurer that uses insurance scores to underwrite and rate risk shall file its scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of an insurer. A filing that includes insurance scoring may include loss experience justifying the use of credit information. The insurer may request that information requested pursuant to this subsection (5) not be open to public inspection or considered an open record pursuant to article 72 of title 24, C.R.S.

(6) An insurer shall indemnify, defend, and hold a producer harmless against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of the producer who obtains or uses credit information or insurance scores for an insurer, so long

as the producer follows the instructions of or procedures established by the insurer and complies with any applicable law or rule. Nothing in this section shall be construed to provide a consumer or insured with a cause of action that does not exist in the absence of this section.

(7) (a) A consumer reporting agency shall not provide or sell data or lists that include information that, in whole or in part, was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Information that may not be provided or sold includes, but is not limited to, the expiration dates of an insurance policy or other information that may identify periods in which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in paragraph (a) of this subsection (7) shall not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on behalf of whom the producer acted, or such insurer's affiliates or holding companies.

(c) Nothing in this subsection (7) shall be construed to restrict an insurer from being able to obtain a claims history report or a motor vehicle report.

(8) For the purposes of this section, unless the context otherwise requires:

(a) "Adverse action" means a denial or cancellation of, an increase in any charge for, or a reduction or other unfavorable change in the terms of coverage or amount of any insurance existing or applied for in connection with the underwriting of personal lines of property and casualty insurance coverages.

(b) "Affiliate" means a company that controls, is controlled by, or is under common control with another insurer.

(c) "Applicant" means a person who has applied to be covered under a policy of personal lines of property and casualty insurance.

(d) "Beneficiary or claimant" includes an insured person and a third-party claimant.

(e) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of personal lines of property and casualty insurance or an application for personal lines of property and casualty insurance coverage.

(f) "Consumer reporting agency" shall have the same meaning as in section 12-14-103 (4.5), C.R.S.

(g) "Credit information" means credit-related information derived from a credit report itself or provided on an application for personal lines of property and casualty insurance. Information that is not credit-related shall not be considered "credit information" regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(h) "Credit report" means a written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal lines of property and casualty insurance premiums, eligibility for coverage, or tier placement.

(i) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purpose of predicting the future insurance loss exposure of an individual applicant or insured.

**Source: L. 2004:** Entire section added, p. 1974, § 1, effective January 1, 2005.

**10-4-117. Loss history information report - notice to insured - definition.** (1) Each insurer shall print in at least twelve-point bold-faced type, on the first page of each packet containing the insurance policy and each packet containing the renewal notice for homeowner's insurance or as a separate document:

(a) Information regarding how an insured may obtain a free copy of his or her loss history information report;

(b) A toll-free telephone number that the insured may call to obtain the loss history information report; and



(c) A web site address that the insured may access to obtain the loss history information report.

(2) For the purposes of this section, "loss history information report" means a compilation of an insured's prior loss history information used by an insurer in the insured's homeowner's insurance underwriting process. Such information may include, but need not be limited to, the insured's name, date of birth, and claim information such as date of loss, type of loss, and the amounts paid for the loss, if any, or any other information that may negatively affect the insured's rate of homeowner's insurance or the ability to obtain homeowner's insurance. A loss history information report shall include only information regarding claims made to an insurer and shall not include information regarding inquiries made to the insurer.

**Source: L. 2004:** Entire section added, p. 1972, § 2, effective August 4; entire section added, p. 1981, § 2, effective January 1, 2005.

**Editor's note:** This section was originally numbered as § 10-4-116 in House Bill 04-1236 but was renumbered on revision and harmonized with § 10-4-117 as enacted by House Bill 04-1292.

**10-4-118. Severability.** If any provision or clause of this part 1 or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this part 1 that can be given effect without the invalid provision or application, and to this end the provisions of this title are declared to be severable.

**Source: L. 2004:** Entire section added, p. 1973, § 4, effective August 4; entire section added, p. 1981, § 2, effective January 1, 2005.

**Editor's note:** This section was originally numbered as § 10-4-117 in House Bill 04-1236 but was renumbered on revision and is identical to § 10-4-118 as enacted by House Bill 04-1292.

**10-4-119. Monthly and electronic payment of premiums.** An insurer offering personal lines of property and casualty insurance shall offer each policyholder the option to pay his or her insurance premiums monthly and to make premium payments by automatic electronic transfer. The insurer shall not be required to offer such payment options if an applicant or policyholder has previously made one or more premium payments that were dishonored because the account closed, the account had insufficient funds, or for any other similar reason for nonpayment.

**Source: L. 2005:** Entire section added, p. 345, § 1, effective December 31.

**10-4-120. Unfair or discriminatory trade practices - legislative declaration.**  
(1) (a) The general assembly determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest-quality commodities and services, and the best environment for democratic and social institutions. Therefore, the right of the individual to choose a repair business is a matter of statewide concern.

(b) The general assembly declares that the purposes of this section are to:

(I) Safeguard the public against monopolies, trusts, and market barriers;

(II) Foster and encourage competition by prohibiting unfair and discriminatory insurance practices that impede fair and honest competition;

(III) Ensure that all consumers benefit from competition and the expansion of choices in the marketplace; and

(IV) Enhance Colorado's economic development.

(c) This section shall be liberally construed so that its beneficial purposes may be served.

(2) An insurer or its agent that issues or renews a policy that insures real or personal property shall not:

- (a) Directly or indirectly require that appraisals or repairs to the property be made or not be made by a specified repair business;
  - (b) Represent to a beneficiary or claimant who is making a claim under a policy that the use of, or the failure to use, a particular repair business may result in the nonpayment or delayed payment of a claim;
  - (c) Intimidate, coerce, threaten, or induce by incentive a beneficiary or claimant to use a particular repair business for repairs; except that an inducement by incentive does not include warranty or guaranty repairs;
  - (d) Contract with a person to manage, handle, or arrange insurance repair work or to act as an agent for the insurer if:
    - (I) The contract requires a particular repair business to do claims work for the insurer at a price established by the insurer; and
    - (II) The person retains a percentage of any compensation paid by the insurer;
  - (e) Use disincentives to discourage a beneficiary or claimant from using a particular repair business; except that a disincentive does not include warranty or guaranty repairs;
  - (f) Solicit or accept a referral fee or compensation in exchange for referring the beneficiary or claimant to a repair facility;
  - (g) Require the beneficiary or claimant to travel an unreasonable distance to choose a repair facility;
  - (h) Misinform a beneficiary or claimant to induce the use of a particular repair business; or
  - (i) In the settlement of a liability claim by a third party against a beneficiary or claimant for property damage claimed by the third party, require a third-party claimant to have repairs done by a particular repair business.
- (3) An insurer or its agent that issues or renews a policy that insures real or personal property shall:
- (a) Supply the beneficiary or claimant with a copy of the estimate upon which the settlement is based, when partial losses are settled on the basis of an estimate prepared by or for the insurer;
  - (b) Require that any estimate prepared by or for the insurer covering damages that are visible or evident at the time of inspection is adequate to restore the property within a reasonable time to its condition before the loss, in accordance with applicable policy provisions;
  - (c) Pay for repair services and products based on a prevailing competitive price, as established by competitive bids, generally accepted insurer-based methodology, or market surveys that determine a fair and reasonable market price for similar services;
  - (d) Orally or in writing disclose to a beneficiary or claimant that the beneficiary or claimant may freely choose any repair business;
  - (e) Assume all reasonable costs sufficient to pay for the beneficiary's or claimant's repairs including materials or parts, less any applicable deductible or reduction for comparative negligence;
  - (f) Promptly pay the cost of property repair services and products from any repair facility location that is within a reasonable distance, less any applicable deductible amount payable by the beneficiary or claimant according to the terms of the insurance policy, at no less than the prevailing competitive market price in the same geographic area; and
  - (g) Disclose to the beneficiary or claimant any ownership interest in, or ownership by or through an affiliation with, a repair business recommended by the insurer when the recommendation is made.
- (4) An insurer is not required to furnish the notices required by this section more than once to each beneficiary or claimant for each claim.
- (5) A beneficiary, claimant, or repair business may submit a written, documented complaint to the commissioner alleging a violation of this section.
- (6) Notwithstanding any other provision of this section, an insurer or its agent shall inform the beneficiary or claimant that he or she may select any repair business of his or her



choosing, and, if the insurer chooses, the insurer may also inform the beneficiary or claimant that the insurer can provide a list of repair businesses for the beneficiary or claimant to consider.

**Source: L. 2007:** Entire section added, p. 972, § 1, effective May 18.

## PART 2

### FIRE, MARINE, AND INLAND MARINE INSURANCE - RATES AND RATING ORGANIZATIONS

#### 10-4-201 to 10-4-217. (Repealed)

**Source: L. 79:** Entire part repealed, p. 379, § 19, effective July 1.

**Editor's note:** This part 2 was numbered primarily as article 11 of chapter 72, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For current provisions concerning rate regulation of fire and inland marine insurance, see § 10-4-401 (3)(b).

## PART 3

### BONDS EXECUTED BY QUALIFIED SURETY COMPANIES

**Editor's note:** This part 3 was numbered primarily as article 12 of chapter 72, C.R.S. 1963. The substantive provisions of this part 3 were repealed and reenacted in 1979, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 3 prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**10-4-301. Bond executed by surety company.** (1) Whenever any bond, undertaking, recognizance, or other obligation is, by law or the charter, ordinance, rules, or regulations of any municipality, board, body, organization, court, judge, or public officer, required or permitted to be made, given, tendered, or filed with surety and whenever the performance of any act, duty, contract, or obligation or the refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance, or guaranty may be executed as surety by a company qualified as provided in this title. Such execution by the company of such bond, undertaking, obligation, recognizance, or guaranty shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule, or regulation that the bond, undertaking, obligation, recognizance, or guaranty was executed by one or more sureties or that sureties shall be residents or householders or freeholders, or either, or both, or possess any other qualifications.

(2) All courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance, or guaranty, when so executed by such company, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule, or regulation; except that such company may be required to justify, in such terms and for such amounts as may be satisfactory, to the court, person, or body authorized to approve such surety.

**Source: L. 79:** Entire part R&RE, p. 360, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-4-321 as it existed prior to 1979.

**10-4-302. Release of surety - other security.** Any surety upon the bond of any state, county, municipal, judicial district, irrigation district, or court officer shall be released from further liability as such surety for such officer by filing, with the person having authority to approve said bond or with whom said bond is directed to be filed, a notice that said surety is unwilling to continue to be surety for such officer. When any such notice is filed, written notice thereof shall immediately be given to such officer, who shall thereupon file other security to be approved as provided by law. If such officer, within ten days after the service of such notice upon him, does not file such bond to be approved, the office shall become vacant, and the vacancy shall be filled in the manner provided by law. If a new bond is given by any officer, as provided, the former surety shall be entirely released and discharged from all liability incurred by such officer from and after the time of giving of such notice, and the sureties to the new bond shall be liable therefor as provided in such bond.

**Source:** L. 79: Entire part R&RE, p. 361, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-4-322 as it existed prior to 1979.

**10-4-303. Application for release of surety - refund.** When any company, surety upon the official bond of any trustee, committee, conservator, guardian, assignee, receiver, executor, administrator, or other fiduciary in this state desires to be released from such obligation, such surety shall file its application for such release in the court having jurisdiction of such fiduciary, and, thereupon, the clerk of such court shall issue, under the seal thereof, a notice to such fiduciary requiring him to furnish a new bond, with sureties to be approved by the court, within ten days after the date of the service of said notice. Such notice may be served in the manner provided by law for the service of a summons in a civil action. If such fiduciary fails to furnish such bond within the time prescribed, he shall be summarily removed from office, and a new trustee, committee, conservator, guardian, assignee, receiver, executor, administrator, or other fiduciary shall be forthwith appointed. From and after the time when such new bond is furnished and approved, or such new fiduciary appointed and qualified, the surety making such application shall be released from all liability upon its bond, except for such default or other misconduct on the part of such fiduciary as occurred prior thereto. If any surety has been released or withdrawn as provided in this title, and if the principal accounts in due form of law for all of his acts and doings and all trust funds or estate in his hands and secured by such bond, and if such account has been approved so that there is no further liability of the surety upon such bond, the unearned portion of any premium paid to such surety shall be refunded and repaid by the said surety.

**Source:** L. 79: Entire part R&RE, p. 361, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-4-323 as it existed prior to 1979.

**10-4-304. Place of deposit.** It is lawful for any party of whom a bond, undertaking, or other obligation is required to agree with his surety for the deposit of any moneys and assets for which such surety is or may be held responsible with a bank, savings bank, or safe deposit or trust company authorized by law to do business as such or other depository approved by the court, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such moneys and assets or any part thereof, without the written consent of such surety or an order of the court made on such notice to such surety as such court may direct, and such agreement shall not in any manner release or change the liability of the principal or sureties as established by the terms of the bond.

**Source:** L. 79: Entire part R&RE, p. 361, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-4-324 as it existed prior to 1979.

**10-4-305. Bond part of expense.** Any receiver, assignee, guardian, trustee, committee, executor, administrator, curator, or other fiduciary required by law or the order of any court



to give a bond or other obligation as such may include, as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under the laws of this state so to do for becoming his surety on such bond as may be allowed by the court in which he is required to account, not exceeding one percent per annum on the amount of such bond or other obligation. A party to any action, suit, or proceeding entitled to recover costs in such action, suit, or proceeding shall be allowed and may have taxed and may recover, as costs therein, such sum as said party has paid such a company as premium for executing any bond, recognizance, undertaking, stipulation, or other obligation therein, not exceeding five dollars per annum for each thousand dollars or fraction thereof of the penalty of such bond, recognizance, undertaking, stipulation, or other obligation for each year or part thereof that the same has been in force. The premium so paid shall be taxed by the clerk of the court in which such action, suit, or proceeding is pending, as costs therein, upon production to him of proper receipt for the payment of such premium, which receipt shall be by him filed with the papers in the cause.

**Source:** L. 79: Entire part R&RE, p. 362, § 7, effective July 1.

**Editor's note:** This section is similar to former § 10-4-325 as it existed prior to 1979.

## PART 4

### RATE REGULATION

**Editor's note:** This part 4 was numbered as article 35 of chapter 72, C.R.S. 1963. The substantive provisions of this part 4 were repealed and reenacted in 1979, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 4 prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**10-4-401. Purpose - applicability.** (1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anti-competitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the availability and reliability of insurance. For such purposes, the division of insurance of the department of regulatory agencies and the head of the division, the commissioner of insurance, shall be charged with the execution of this part 4.

(2) This part 4 shall apply to all kinds of insurance except:

- (a) Reinsurance other than joint reinsurance as provided in section 10-4-411;
  - (b) Life insurance and annuities regulated under article 7 of this title;
  - (c) Sickness and accident insurance regulated under parts 1 and 2 of article 16 of this title;
  - (d) Nonprofit hospital and health services regulated under parts 1 and 3 of article 16 of this title;
  - (e) Health maintenance organization services regulated under parts 1 and 4 of article 16 of this title;
  - (f) (Deleted by amendment, L. 2000, p. 465, § 3, effective August 2, 2000.)
  - (g) Surplus line insurance regulated under article 5 of this title.
- (3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:

(a) Type I kinds of insurance, regulated by prior filing and approval of rating information, which shall be subject to all provisions of this part 4 unless specifically excluded by the terms of a section. The following kinds of insurance shall be classified as type I:

(I) Workers' compensation and employer's liability incidental thereto for any pure premium rate filed by a rating organization. With regard to a rate filing submitted by a rating organization, the commissioner shall make available to the public, in a manner deemed

appropriate by the commissioner, the aggregate loss and payroll data by class code that the rating organization submits with the rate filing. Such data shall not be used for any commercial purpose.

(II) (Deleted by amendment, L. 2000, p. 465, § 3, effective August 2, 2000.)

(III) Assigned risk motor vehicle insurance;

(IV) and (V) Repealed.

(VI) Such other kinds of insurance as the commissioner shall order classified as type I pursuant to the provisions of section 10-4-403 (5).

(b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title, credit, workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance that are subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner; except that credit life and credit accident and health insurers shall file schedules of premium rates pursuant to sections 10-10-109 and 10-10-110. A rate filing summary for a type II kind of insurance subject to this part 4, except for workers' compensation insurance, shall be posted on the division's web site in order to provide notice to the public. The public notice shall include the rate standards that apply pursuant to section 10-4-403 (1). Nothing in this section shall be construed to limit the right of the public to inspect a rate filing and any supporting information pursuant to part 2 of article 72 of title 24, C.R.S., or to impair the commissioner's ability to review rates and determine that the rates are not excessive, inadequate, or unfairly discriminatory.

(4) Except for type I kinds of insurance as defined in paragraph (a) of subsection (3) of this section, prior approval of rates, schedules of rates, rating plans, rating classifications and territories, rating rules, and rate manuals with the commissioner, or his prior approval thereof, shall not be required. In lieu thereof, the provisions of paragraph (b) of subsection (3) of this section and sections 10-4-413, 10-4-414, and 10-4-418 regarding the availability of such items, the review thereof, and hearings and judicial review thereof are applicable.

(5) Rate filings for insurance subject to this part 4 shall be filed electronically in a format made available by the division, unless exempted by rule for an emergency situation as determined by the commissioner.

**Source:** L. 79: Entire part R&RE, p. 362, § 8, effective July 1. L. 81: (3)(a)(V) repealed and (3)(b) amended, pp. 563, 562, §§ 3, 1, effective July 1. L. 86: (2)(g), (3)(b), and (4) amended, p. 579, § 2, effective July 1. L. 87: (2)(g) amended, p. 427, § 6, effective May 1; (3)(a)(IV) repealed, p. 439, § 10, effective May 22. L. 90: (3)(a)(I) amended, p. 558, § 15, effective July 1. L. 91: (3)(a)(I) and (3)(b) amended, p. 1194, § 1, effective April 11. L. 92: (2)(f) amended, p. 1557, § 56, effective May 20; (2)(d) and (2)(e) amended, p. 1724, § 7, effective July 1. L. 2000: (2)(f) and (3) amended, p. 465, § 3, effective August 2. L. 2006: (2)(c) amended, p. 1490, § 12, effective June 1. L. 2007: (3)(b) amended and (5) added, p. 2003, § 1, effective January 1, 2008. L. 2010: (3)(b) amended, (HB 10-1220), ch. 197, p. 854, § 17, effective July 1; (3)(a)(I) amended, (SB 10-112), ch. 52, p. 196, § 2, effective August 11.

**Editor's note:** This section is similar to former §§ 10-4-301, 10-4-302, and 10-4-401 as they existed prior to 1979.

**Cross references:** For the legislative declaration contained in the 2000 act amending subsections (2)(f) and (3), see section 1 of chapter 135, Session Laws of Colorado 2000.

## ANNOTATION

**Law reviews.** For article, "Assemblage, Design and Construction for Real Estate Developments", see 11 Colo. Law. 2297 (1982).



**10-4-402. Definitions.** As used in this part 4, unless the context otherwise requires:

(1) "Advisory organization" means every group, association, or other organization of insurers, whether located within or outside this state, which prepares policy forms or assists insurers which make their own rates or rating organizations in rate-making by the collection and furnishing of loss or expense statistics or by the submission of recommendations, but which does not make rates under this part 4. "Advisory organization" does not include a joint underwriting association, any actuarial or legal consultant, an insurer or insurers under common control or management, or their employees or managers.

(1.3) "Classification system" or "classification" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(1.4) "Competitive market" means a market which has not been found to be noncompetitive pursuant to section 10-4-403 (5).

(1.5) "Expenses" means that portion of any rate attributable to acquisition, field supervision, and collection expenses, general expenses, and taxes, licenses, and fees.

(1.6) "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

(2) "Member" means an insurer who participates or is entitled to participate in the management of a rating, advisory, or other organization.

(2.3) "Noncompetitive market" means a market for which there is a ruling in effect pursuant to section 10-4-403 (5) that a reasonable degree of competition does not exist.

(2.4) "Pure premium rate" means that portion of the rate which represents the loss cost per unit of exposure, including loss adjustment expenses.

(3) "Rating organization" means every person, other than an admitted insurer, which has as its object or purpose the making of pure premium rates, rating plans, or rating systems. Two or more admitted insurers, other than insurers having a common ownership or operating in this state under common management or control, which act in concert for the purpose of making pure premium rates, rating plans, or rating systems shall be deemed to be a rating organization unless they operate within the specific authorizations contained in sections 10-4-404, 10-4-409, 10-4-411, and 10-4-412. No single insurer, joint underwriting association, actuarial or legal consultant, insurer or insurers under common control or management, or their employees or managers shall be deemed to be a rating organization.

(3.5) "Stacking" means aggregating, combining, multiplying, or pyramiding limits of separate policies providing uninsured and underinsured motorist coverage as provided in section 10-4-609.

(4) "Subscriber" means an insurer which is furnished, at its request: With rates and rating manuals by a rating organization of which it is not a member; or with advisory services by an advisory organization of which it is not a member.

**Source:** L. 79: Entire part R&RE, p. 363, § 8, effective July 1. L. 91: Entire section amended, p. 1194, § 2, effective April 11. L. 92: (3.5) added, p. 1758, § 1, effective June 5.

**Editor's note:** This section is similar to former § 10-4-401 as it existed prior to 1979.

**10-4-403. Standards for rates - competition - procedure - requirement for independent actuarial opinions regarding 1991 legislation.** (1) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:

(a) Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.

(b) Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or the use of such rates, if continued, will tend to create a monopoly in the market.

(c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result

for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104 (1) (f) shall apply.

(2) (a) In determining whether rates comply with the excessiveness standard, the inadequacy standard, and the unfair discrimination standard, the following criteria shall apply:

(I) Concerning basic factors in rates, due consideration shall be given to past and prospective loss and expense experience, to catastrophe hazards and contingencies, to events or trends, to loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment;

(II) Concerning expenses, the expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expenses experience;

(III) Concerning profits, the rate shall contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and the reserves associated with those premiums.

(b) In setting rates, insurers shall consider past and prospective loss experience and catastrophic hazards, if any, solely within the state of Colorado. However, if there is insufficient experience within Colorado upon which a rate can be based, the insurer may consider experiences within any other state or states which have a similar cost of claim and frequency of claim experience as the state of Colorado; and, if insufficient experience is available, the insurer may use a countrywide experience. The insurer, in its rate filing or in its records, shall expressly state and describe what rate experience it is using, and for Colorado business other than workers' compensation insurance, the insurer shall specify the state or states from which experiences were drawn and the considerations used in setting the rates. In considering experience outside the state of Colorado, as much weight as possible shall be given to the Colorado experience. The rates shall allow a reasonable margin for profit, as allowed in subparagraph (III) of paragraph (a) of this subsection (2), and contingencies.

(2.1) (a) In setting rates for medical malpractice insurance, rates shall not be excessive or inadequate, as defined in this section, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable. No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same, or unless such rate is unreasonably low for the insurance provided and the use of rate by the insurer using the same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) In setting rates, medical malpractice insurers shall consider past and prospective loss experience and catastrophic hazards, if any, solely within the state of Colorado. However, if there is insufficient experience within Colorado upon which a rate can be based, the insurer may consider experiences within any other state or states which have a similar cost of claim and frequency of claim experience as the state of Colorado; and, if insufficient experience is available, the insurer may use a nationwide experience. The insurer, in its rate filing or in its records, shall expressly state and describe what rate experience it is using, specifying the state or states from which experiences were drawn and the considerations used in setting the rates. In considering experience outside the state of Colorado, as much weight as possible shall be given to the Colorado experience. The rates shall allow a reasonable margin for profit and contingencies, including dividends, savings, or unearned premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. In determining profits, the insurer shall consider investment income from unearned premium reserves and reserves for incurred losses and incurred but not reported losses.



(c) Medical malpractice insurers shall specify in their rate filings and shall consider and support the evaluation with an analysis and opinion of a qualified property and casualty actuary, and the commissioner as a result of such filing or upon his own motion may also consider, the impact of the following on medical malpractice rates:

(I) Tort reform legislation;

(II) Risk management activities;

(III) Underwriting standards and practices;

(IV) Any other activity designed to reduce rates or rate increases or the cost of administration and determination of claims.

(d) and (e) Repealed.

(2.5) Notwithstanding any provision of law to the contrary, any insurer licensed to sell motor vehicle insurance within the state of Colorado may offer a reduction in premiums if the claims experience subsequent to the enactment of section 42-4-237, C.R.S., so warrants.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4.6) Repealed.

(5) Under the commissioner's power to review rates of all companies, if he determines, after a hearing and on the basis of findings of fact and conclusions, that, with respect to any territory or to any kind, subdivision, or class of insurance, competition is either insufficient to assure that rates will not be excessive, or so conducted as to be destructive of competition or detrimental to the solvency of insurers, he shall order that the rates for such insurance or territory shall be regulated as type I kinds of insurance as defined in section 10-4-401 (3) (a). Such order shall have a specified duration of not more than one year but may be renewed by the commissioner upon appropriate findings of fact, conclusions, and order.

(6) The commissioner shall require an independent actuarial opinion that the best estimate of the impact of the reforms to the workers' compensation system enacted in Senate Bill 91-218 during the first regular session of the fifty-eighth general assembly have been incorporated in any workers' compensation rate change filed with the commissioner until July 1, 1994.

(7) This section shall not apply to insurers providing coverage to exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** **L. 79:** Entire part R&RE, p. 364, § 8, effective July 1. **L. 86:** (2) amended, p. 579, § 3, effective July 1. **L. 87:** (2.5) added, p. 1533, § 4, effective May 7. **L. 88:** (2.1) and (4.6) added, p. 623, § 2 effective July 1. **L. 91:** (1), (2), and (2.1) amended, p. 1196, § 3, effective April 11; (6) added, p. 1337, § 53, effective July 1. **L. 93:** (2.1)(e) added, p. 1920, § 3, effective July 1. **L. 94:** (2.5) amended, p. 2545, § 17, effective January 1, 1995. **L. 99:** (7) added, p. 386, § 2, effective January 15, 2000. **L. 2000:** (2.1)(d) and (4.6) repealed, p. 465, § 4, effective August 2. **L. 2006:** (2)(b) and (2.1)(b) amended, p. 1430, § 2, effective August 7.

**Editor's note:** (1) This section is similar to former §§ 10-4-303 and 10-4-402 as they existed prior to 1979.

(2) Subsection (2.1)(e)(II) provided for the repeal of subsection (2.1)(e), effective July 1, 1996. (See L. 93, p. 1920.)

**Cross references:** For the legislative declaration contained in the 2000 act repealing subsections (2.1)(d) and (4.6), see section 1 of chapter 135, Session Laws of Colorado 2000.

## ANNOTATION

**Insurance commissioner does not set rates,** but rather he is to consider the present projections of future needs based on past experience, and then, based thereon, either approve or disapprove the rates submitted by the insurer. *State Farm Mut. Auto. Ins. Co. v. Barnes*, 41 Colo. App. 380, 585 P.2d 929 (1978) (decided under former § 10-4-403 as it existed prior to the 1979 repeal and reenactment of this article).

**No regulation of agent's freedom to select coverages.** This section was not intended to be a mechanism through which the commissioner could indirectly regulate an independent insurance agent's freedom to select individual coverages best suited to the needs of his clients and to the economies of his business. *United States*

*Fid. & Guar. Co. v. Barnes*, 42 Colo. App. 49, 589 P.2d 76 (1978) (decided under former § 10-4-402 as it existed prior to the 1979 repeal and reenactment of this article).

**That a filing approved by the commissioner applies only to new and renewal policies does not, of itself, make such filing unfairly discriminatory,** as the filing merely prevented new rates from being retroactively imposed on existing insurance contracts. Although application of new rates only to new and renewal policies differentiates among policy holders based on their renewal date, the rates are not unfairly discriminatory. *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**10-4-404. Rate administration.** (1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

(2) (a) The commissioner may require that the annual report and any such supplemental report which contains information of a company's loss and loss adjustment reserves be accompanied by an opinion signed and sworn to by a qualified and independent actuary verifying that, within the nine months prior to the submission of the report, the actuary has conducted a review and analysis of the insurance company's loss and loss adjustment reserves and the reserves are computed in accordance with accepted loss reserving standards and are fairly stated in accordance with sound loss reserving principles.

(b) For purposes of the requirements of this section, a qualified actuary shall be an associate or fellow of the casualty actuarial society and shall be independent of the company whose reserves the actuary has reviewed and analyzed and which is submitting the sworn actuarial certificate.

(3) Any insurer who fails to comply with the terms of this section shall pay a civil penalty of ten thousand dollars and a fine of two hundred dollars for every day thereafter until the insurer complies with this section.

(4) It is the duty of the commissioner to maintain for at least six years by carrier all reports submitted by insurers pursuant to rules and regulations promulgated by the commissioner under this section. The commissioner shall consider these reports in determining the appropriateness of premium rates for various types of insurance in this state.

(5) In order to make the administration of rate regulatory laws uniform, the commissioner and every insurer and rating organization may exchange information and loss experience data.

(6) The commissioner shall promulgate regulations to effect rate reductions or credits for insureds who implement plans pursuant to article 14.5 of title 8, C.R.S.

(7) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 79: Entire part R&RE, p. 365, § 8, effective July 1. L. 81: (4) amended, p. 533, § 1, effective April 30. L. 86: (5), (6), and (7) added, p. 558, § 20, effective July 1.



**L. 89:** (7) repealed, p. 442, § 27, effective July 1. **L. 90:** Entire section R&RE, p. 618, § 1, effective April 5; (6) RC&RE, p. 616, § 1, effective April 12. **L. 97:** (4) amended, p. 1477, § 21, effective June 3. **L. 99:** (7) added, p. 387, § 3, effective January 15, 2000.

**Editor's note:** (1) This section is similar to former § 10-4-314 as it existed prior to 1979.

(2) Subsection (6) was numbered as subsection (7) in HB 90-1212 but was renumbered on revision for proper placement in the section as repealed and reenacted by HB 90-1214.

**10-4-404.5. Rating plans - property and casualty type II insurers - rules.** (1) The commissioner may promulgate rules for type II insurers that establish reasonable standards for rating plans, including experience rating plans, schedule rating plans, and expense reduction plans, and that are designed to modify rates in the development of premiums for individual risks insured in the property and casualty insurance market. Such rules may permit recognition of expected differences in loss and expense characteristics and shall be designed so that such plans are reasonable and equitable in their application and are not unfairly discriminatory. Such rules shall not prevent the development of new rating methods that would otherwise comply with this part 4. The rules may establish maximum charges against and credits to the experience rating of an insured that may result from the application of a rating plan. The rules may encourage the use of loss control programs, safety programs, and other methods of risk management and may require insurers to maintain documentation of the basis for the charges and credits applied under any plan. The rules may also require the rating plans to include merit rating to the extent feasible.

(2) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** **L. 88:** Entire section added, p. 402, § 1, effective April 29. **L. 99:** Entire section amended, p. 387, § 4, effective January 15, 2000.

**10-4-404.6. Legislative declaration - obtaining information of impact of changes in the civil justice system. (Repealed)**

**Source:** **L. 89:** Entire section added, p. 452, § 1, effective June 1.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective July 1, 1990. (See L. 89, p. 452.)

**10-4-405. Filing of rating information - certain coverages.** (1) With respect to type I kinds of insurance as defined in section 10-4-401 (3) (a), every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use in this state.

(2) (a) Every filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. Filings regarding workers' compensation insurance rates shall be filed on or before August 1 of any calendar year. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this part 4, he shall, within fifteen days after the date of filing, require the insurer to furnish the information upon which it supports the filing, and in such event the waiting period provided for in section 10-4-406 (2) shall commence as of the date such information is furnished.

(b) The information furnished in support of a filing may include: The experience or judgment of the insurer or rating organization making the filing; its interpretation of any statistical data it relied upon; the experience of other insurers or rating organizations; or any other factors which the insurer or rating organization deems relevant.

(3) A filing and any supporting information shall be open to public inspection at the division of insurance.

(4) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings in its behalf; but nothing contained in this title shall be construed as requiring any insurer to become a member of, or a subscriber to, any rating organization.

(5) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by filing, otherwise applicable, may be used on any specific risk, and such application shall not be subject to any of the provisions of section 10-4-406.

**Source:** L. 79: Entire part R&RE, p. 366, § 8, effective July 1. L. 2004: (2)(a) amended, p. 395, § 1, effective August 4.

**Editor's note:** This section is similar to former § 10-4-304 as it existed prior to 1979.

**10-4-406. Review of filings - certain coverages.** (1) Upon receipt of filings required under the provisions of section 10-4-405 (1), the commissioner shall review, or cause to be reviewed, the same as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this part 4.

(2) A filing which the commissioner has placed on file for public inspection, shall so remain on file for fifteen days (counting such filing date as the first day of such public inspection period) and shall not be approved, disapproved, or become effective during such fifteen-day period except after a public hearing. If not theretofore approved or disapproved after a public hearing thereon, or affirmatively approved or disapproved by the commissioner on the sixteenth day after the filing was so placed on file for public inspection, the filing shall be deemed approved as of 12:01 a.m. on such sixteenth day, unless within such fifteen-day period the commissioner concludes it to be in the public interest to hold a public hearing to determine whether the filing meets the requirements of this part 4 and gives notice of such hearing to the insurer or rating organization that made the filing, in which case the effectiveness of the filing shall be subject to the further order of the commissioner.

(2.5) For any filing made pursuant to section 10-4-405 for workers' compensation and employer's liability insurance incidental thereto and written in connection therewith, and where the commissioner determines that it is necessary to use the services authorized in subsection (3.5) of this section, the commissioner shall have a reasonable time not to exceed sixty days to review or inspect the filing after it is determined to be complete and before the filing shall be considered placed on file pursuant to subsection (2) of this section. The commissioner shall place on file for public inspection the results of any review or examination performed pursuant to subsection (3.5) of this section.

(3) An insurer or rating organization may, at the time it makes a filing with the commissioner, request a public hearing thereon. In such event the commissioner shall forthwith place the filing on file in his office for public inspection, and shall give notice of the hearing, and shall otherwise hold and conduct the hearing as provided in section 10-4-407; and the effectiveness of the filing shall be subject to the commissioner's order made following the hearing.

(3.5) If the commissioner determines that it is reasonably necessary, the commissioner may cause the filing to be reviewed or examined by actuaries, accountants, insurance experts, or any other person at the discretion of the commissioner. The reasonable costs of any such review or examination shall be paid by the rating organization, advisory organization, or group, association, or insurer submitting the filing for approval.

(4) (a) If any such filing results in a change in premium rate as to assigned risk motor vehicle insurance, the commissioner shall, coincidentally with placing the filing on file in his office for public inspection as provided in this section, inform two established news agencies having offices at Denver thereof by mailing, postage prepaid, to each of said news agencies a notice of such filing. Such notice shall read as follows:

Notice of assigned risk motor vehicle insurance rate filing, pursuant to section 10-4-406 (4), Colorado Revised Statutes, is hereby given by the commissioner of insurance that a rate change has been filed by:



Name of insurance company

Type of property affected

Type of insurance coverage

Nature of rate change

Date of filing

Dated and signed at Denver, Colorado, this ( ) day of (month), 20....

By: .....

Commissioner of Insurance

The commissioner shall certify in writing as to the mailing of the aforesaid notices to such news agencies, and a copy of the certificate shall be made part of the commissioner's records pertaining to such filings. The effectiveness of any such filing or action of the commissioner relative thereto shall not be affected by failure of the commissioner so to inform any particular news agency.

(b) It is the intent of this subsection (4) that the sending of said notice is the responsibility of the commissioner and not of the company or rating organization requesting the rate change.

(5) (a) If the commissioner approves a filing, he or she shall give prompt notice thereof to the insurer or rating organization that made the filing. The filing shall become effective upon such subsequent date as may be satisfactory to the commissioner and the insurer or rating organization that made the filing; except that rates for workers' compensation insurance shall become effective on January 1 unless the commissioner, upon application, makes a finding upon good cause shown that a later date is necessary or appropriate for the implementation of such filing.

(b) If the filing is deemed approved in the absence of affirmative action by the commissioner, as provided in subsection (2) of this section, it shall become effective upon such subsequent date as may be satisfactory to the commissioner and the insurer or rating organization that made the filing; except that rates for workers' compensation insurance shall become effective on January 1 unless the commissioner, upon application, makes a finding upon good cause shown that a later date is necessary or appropriate for the implementation of such filing.

(c) If the commissioner disapproves a filing, he shall promptly give notice of such action to the insurer or rating organization that made the filing, stating the respects in which the filing does not meet the requirements of this part 4.

**Source:** **L. 79:** Entire part R&RE, p. 366, § 8, effective July 1. **L. 85:** (5) amended, p. 381, § 2, effective April 17. **L. 91:** (1) amended and (2.5) and (3.5) added, p. 1198, § 4, effective April 11; (2.5) amended, p. 1909, § 11, effective June 1. **L. 2004:** (5)(a) and (5)(b) amended, p. 395, § 2, effective August 4.

**Editor's note:** This section is similar to former § 10-4-305 as it existed prior to 1979.

## ANNOTATION

**Applied** in *Barnes v. District Court*, 199 Colo. 310, 607 P.2d 1008 (1980).

**10-4-407. Hearings.** (1) If, pursuant to section 10-4-406 (2), the commissioner determines to hold a public hearing as to a filing or holds such a public hearing pursuant to request therefor under section 10-4-406 (3), he shall give written notice thereof to the rating organization or insurer that made the filing, shall hold such hearing within thirty days after commencement of the public inspection period provided for in section 10-4-406 (3), and, not less than ten days prior to the date of the hearing, he shall give written notice of the hearing to the insurer or rating organization that made the filing. The commissioner may also give advance public notice of such hearing by publication of notice in one or more

daily newspapers of general circulation in this state.

(2) If the commissioner's order disapproves the filing, the rate change shall not be placed into effect. If the commissioner's order approves the filing or any portion thereof, the approved rate filing shall become effective upon such subsequent date as may be satisfactory to the insurer or rating organization that made the filing; except that rates for workers' compensation insurance shall become effective on January 1 unless the commissioner, upon application, makes a finding upon good cause shown that a later date is necessary or appropriate for the implementation of such filing.

(3) Any person aggrieved by the approval by the commissioner of a rate filing may make written application to the commissioner for a hearing thereon, and such application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall hold a hearing as provided in sections 24-4-102 to 24-4-107, C.R.S.

(4) Any insurer or rating organization aggrieved by an order or decision of the commissioner made without a hearing may, within thirty days after notice of the order or decision to the insurer or rating organization, make written application to the commissioner for a hearing thereon. The commissioner shall hold a hearing as provided in sections 24-4-102 to 24-4-107, C.R.S. Within fifteen days after such hearing, the commissioner shall affirm, reverse, or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

(5) Hearings held under this part 4 shall be held by the commissioner or his designee. Any final action of the commissioner pursuant to this part 4 shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** **L. 79:** Entire part R&RE, p. 368, § 8, effective July 1. **L. 85:** (2) amended, p. 382, § 3, effective April 17. **L. 86:** (5) added, p. 580, § 4, effective July 1. **L. 91:** (2) amended, p. 1199, § 5, effective April 11. **L. 92:** (5) amended, p. 1557, § 57, effective May 20. **L. 2004:** (2) amended, p. 396, § 3, effective August 4.

**Editor's note:** This section is similar to former §§ 10-4-318 and 10-4-403 as they existed prior to 1979.

#### ANNOTATION

**This section provides for two types of hearings:** A quasi-legislative, public hearing to evaluate rate filings, and an individual, quasi-judicial hearing. An application for a quasi-judicial hearing must be granted by the commissioner if the commissioner finds that: (1) The application is made in good faith; (2) the applicant would be aggrieved if the facts alleged are true; and (3) those grounds otherwise justify holding such a hearing. *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**The applicant must meet all of the above criteria in order to be entitled to a quasi-judicial hearing.** And the applicant's status as "aggrieved" did not entitle applicant to such hearing, since the application lacked sufficient grounds and thus did not meet all three criteria. *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**Applicants did not assert sufficient grounds in requesting a hearing where the**

issue to be heard was whether reductions in insurance rates should apply to outstanding policies instead of being limited to new and renewed policies. *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**Applicants were not denied due process rights** as they could not establish that they had a constitutionally protected right to receive a lower insurance rate or maintain parity with other employers. Any deprivation that may have occurred was a result of quasi-legislative action, and neither the constitution nor this section require notice. *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**As commissioner's order was subject to review, applicants were not denied access to the courts guaranteed by the state constitution.** *D & B Enters., Inc. v. Commissioner of Ins.*, 919 P.2d 935 (Colo. App. 1996).

**Applied in** *Barnes v. District Court*, 199 Colo. 310, 607 P.2d 1008 (1980).



**10-4-408. Rating organization - study of workers' compensation rates - premium reductions - adoption of rules.** (1) A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this state, may make application to the commissioner for a license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) A statement of its qualifications as a rating organization.

(2) If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days after the date of its filing. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(3) Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

(4) Every rating organization shall notify the commissioner promptly of every change in:

(a) Its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business;

(b) Its list of members and subscribers;

(c) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(5) (a) The commissioner shall organize a working group composed of representatives of employer and employee organizations, regulatory agencies, and the insurance industry including, but not limited to, representatives of businesses insured for worker's compensation in the state of Colorado and an insurance actuary to study issues concerning workers' compensation rates, including, but not limited to, definitions of excessive, inadequate, and discriminatory rates, profits, expenses, and loss-ratio standards for insurance companies, and powers the commissioner should have concerning the rate-setting process.

(b) The commissioner and the working group shall also review the appropriateness of allowing insurance carriers to provide up-front premium discounts as opposed to providing only premium dividends to insureds based on participation in risk-management programs.

(c) The commissioner shall promulgate rules and regulations which establish standards for risk-management services which shall be offered by community, technical, or junior colleges or by insurance carriers offering workers' compensation insurance pursuant to articles 40 to 47 of title 8, C.R.S. Business entities which accept such risk-management services and comply with the standards established by the commissioner shall be entitled to a premium dividend if any such business entity's loss experience under the risk-management program indicates such premium dividend is warranted. In developing such rules and regulations, the commissioner shall consider the information developed by the workers' compensation cost-containment board. In such rules and regulations, the commissioner

shall require insurance carriers to inform policyholders in a clear and conspicuous manner of the availability of cost containment certification by the workers' compensation cost containment board pursuant to section 8-14.5-107, C.R.S.

(d) The commissioner shall promulgate rules and regulations which establish that all insurance companies in this state offering workers' compensation insurance pursuant to articles 40 to 47 of title 8, C.R.S., shall provide a premium differential on all policies when the policyholder has selected an authorized treating physician or physicians. Such premium differential shall be clearly stated to all policyholders in an appropriate communication medium on an annual basis.

(e) On or before October 1, 1994, the commissioner shall promulgate rules which establish, for purposes of section 8-44-115, C.R.S., standards for determining:

(I) When a motor vehicle accident has not been caused, wholly or in part, by an employee or the employer of such employee;

(II) A loss limitation to be included in the calculation of workers' compensation insurance experience modifications when a motor vehicle accident has not been caused, wholly or in part, by an employee or the employer of such employee;

(III) The distribution, among workers' compensation classifications, of any loss remaining after deduction of the loss limitation established under subparagraph (II) of this paragraph (e); and

(IV) (A) When the use of a motor vehicle is an integral part of an employer's business.

(B) Rules promulgated pursuant to this subparagraph (IV) shall be based on the job classification system for workers' compensation insurance in use on January 1, 1994.

**Source:** L. 79: Entire part R&RE, p. 369, § 8, effective July 1. L. 90: (5) added, p. 616, § 2, effective April 12. L. 91: (5)(c) amended, p. 1354, § 3, effective April 20. L. 92: (5)(c) amended, p. 1817, § 2, effective July 1. L. 94: (5)(e) added, p. 1367, § 2, effective October 1. L. 97: (5)(a) amended, p. 1478, § 22, effective June 3. L. 98: (2) amended, p. 1327, § 29, effective June 1.

**Editor's note:** This section is similar to former § 10-4-306 as it existed prior to 1979.

**10-4-409. Rates furnished - cooperation among organizations.** (1) Subject to rules and regulations which are approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers or the refusal of any rating organization to admit an insurer as a subscriber, at the request of any subscriber or any such insurer, shall be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it is made, the insurer may request a review by the commissioner as if the application has been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization is justified, he shall make an order affirming its action.

(2) No rating organization shall adopt any rule the effect of which would prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) Cooperation among rating organizations or among rating organizations and insurers in rate-making or in other matters within the scope of this part 4 is authorized, if the rates resulting from such cooperation are subject to all the provisions of this part 4 which are applicable to rates generally. The commissioner may review such cooperative activities and



practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4 and requiring the discontinuance of such activity or practice.

**Source:** L. 79: Entire part R&RE, p. 369, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-307 as it existed prior to 1979.

**10-4-410. Advisory organizations.** (1) Every advisory organization shall file with the commissioner a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules, and regulations governing its activities, a list of its members, the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 10-4-414.

(2) If, after hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4 and requiring the discontinuance of such act or practice.

**Source:** L. 79: Entire part R&RE, p. 370, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-311 as it existed prior to 1979.

**10-4-411. Joint underwriting.** (1) Every group, association, or other organization of insurers which engages in joint reinsurance or joint underwriting shall be subject to regulation with respect thereto as provided in this part 4.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association, or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this part 4 and requiring the discontinuance of such activity or practice.

**Source:** L. 79: Entire part R&RE, p. 370, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-312 as it existed prior to 1979.

**10-4-412. Assigned risk motor vehicle insurance.** (1) The commissioner may, after consultation with the insurers licensed to write motor vehicle insurance in this state, establish or approve a reasonable plan, and rules governing the same, for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods, and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan, and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan.

(2) If an insurer admitted to transact motor vehicle insurance fails to subscribe to the plan or to any amendments thereto or fails to comply with the rules of the plan, the commissioner shall give ten days' written notice to such insurer to so subscribe or so comply. If such insurer fails to comply with such notice, the commissioner, after hearing, may suspend the certificate of authority of such insurer to transact insurance business in this state until such insurer so complies.

**Source:** L. 79: Entire part R&RE, p. 371, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-316 as it existed prior to 1979.

**10-4-413. Records required to be maintained.** (1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

(2) All records of any such organization or individual insurer dealing with workers' compensation and employer's liability insurance incidental thereto and written in connection therewith shall be subject to the requirements of article 44 of title 8, C.R.S., concerning the filing of its system of rates.

**Source:** L. 79: Entire part R&RE, p. 371, § 8, effective July 1. L. 90: (2) amended, p. 558, § 16, effective July 1.

#### **10-4-414. Examinations.**

(1) Repealed.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this part 4 are applicable to ascertain whether such insurer and every rate and rating system used by it for every such class of insurance complies with the requirements and standards of this title applicable thereto. Such examination need not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, agents, and employees of any such organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by such organization, group, association, or insurer in the conduct of the operations to which such examination relates.

(4) The commissioner may conduct such examination on the basis of concern for an insurer's solvency or the complaint of a person claiming to be aggrieved or to ascertain compliance by insurers and rating organizations with the requirements of this part 4.

(5) Filed reports on examinations shall be available for public inspection at the division of insurance.

(6) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 79: Entire part R&RE, p. 372, § 8, effective July 1. L. 99: (6) added, p. 387, § 5, effective January 15, 2000. L. 2004: (1) repealed, p. 1063, § 13, effective July 1.

**Editor's note:** This section is similar to former § 10-4-313 as it existed prior to 1979.



**10-4-415. Prohibition against anticompetitive behavior.** (1) (a) No insurer or rating organization shall monopolize or attempt to monopolize, or combine or conspire with any other person to monopolize, in any territory, the business of insurance of any kind, subdivision, or class thereof.

(b) No insurer or rating organization shall agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information.

(c) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person to restrain trade.

(d) No insurer or rating organization shall make any agreement with any other insurer, rating organization, or other person the effect of which may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(e) No insurer may acquire or retain any capital stock or assets of, or have any common management with, any other insurer if the effect of such acquisition, retention, or common management may be substantially to lessen competition in any territory or in any kind, subdivision, or class of insurance.

(f) No insurer or rating organization shall make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance.

(g) No rating organization or member or subscriber thereof shall interfere with the right of any insurer to make its rates independently of such rating organization or to charge rates different from the rates made by such rating organization.

(h) No member of or subscriber to a rating organization shall refuse to do business with, or prohibit or prevent the payment of commissions to, any licensed agent or broker on the ground that such agent or broker does business with an insurer which makes its rates, or any portion thereof, independently of such rating organization.

(i) Nothing in this part 4 shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization, or as preventing any insurer, while a member of or subscriber to a rating organization, from making its own rates for any kind, subdivision, or class of insurance, for which it does not elect to authorize the rating organization to act on its behalf.

(j) Any insurer which is a member of or subscriber to a rating organization may make its own rates for any kind, subdivision, or class of insurance. No rating organization shall have authority to act on behalf of any insurer which is a member of or subscriber to such rating organization except as authorized in writing by such member or subscriber, which authority may be supplemented, modified, or revoked, in whole or in part, at any time by such member or subscriber at its option.

(k) No rating organization shall have or adopt any rule or exact any agreement, or formulate or engage in any program, the effect of which would be to require any member, subscriber, or other insurer to utilize some or all of its services, or to adhere to its rates, rating plans, rating systems, underwriting rules, or policy forms, or to prevent any insurer from acting independently.

(2) (a) The commissioner, through the attorney general, and any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action to enjoin any violation of such subsection (1).

(b) Any person injured in his business or property by reason of anything forbidden in subsection (1) of this section may maintain an action and shall be able to recover punitive damages not to exceed actual monetary loss and expense.

**Source:** L. 79: Entire part R&RE, p. 372, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-404 as it existed prior to 1979.

**10-4-416. Prohibiting changes in rates or coverages.** In any case involving insurance subject to this part 4 on which an insured has prepaid a premium for the issuance of a policy of insurance for a specified policy period, the insurer shall not increase unilaterally, during said policy period, the rate charged nor decrease the coverage benefits provided unless there

is a change in risk during the policy term attributable to any act or acts of the insured or the risk to be insured was misrepresented by the insured. This section shall not prohibit cancellation of a policy for any reason otherwise permitted by the policy or by law during an initial policy period of not to exceed sixty days.

**Source: L. 79:** Entire part R&RE, p. 373, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-315 as it existed prior to 1979.

**10-4-417. False or misleading information.** No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer which will affect the rates or premiums chargeable under this part 4.

**Source: L. 79:** Entire part R&RE, p. 374, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-4-214 as it existed prior to 1979.

**10-4-418. Enforcement procedures - penalties.** (1) Any person aggrieved by any rate charged, rating plan, rating system, underwriting rule, policy form, certificate, or contract of insurance or rider followed or adopted by an insurer, advisory organization, or rating organization may request the insurer, advisory organization, or rating organization to review the manner in which the rate, plan, system, rule, form, certificate, or contract or rider has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written. If the request is not granted within thirty days after it is made, it may be treated as rejected. Any person aggrieved by the action of an insurer, advisory organization, or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner finds that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing; however, if he finds that the complaint charges a violation of this title and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in subsection (2) of this section.

(2) (a) If, after examination or inspection of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in subsection (1) of this section, the commissioner has good cause to believe that such insurer, organization, group, or association, or any rate, rating plan, rating system, underwriting rule, policy form, certificate, contract of insurance or rider, made or used by any such insurer, advisory organization, or rating organization, or proposals thereof made by advisory or rating organizations does not comply with the applicable requirements and standards of this title, he shall, unless he has good cause to believe that such noncompliance is willful, give notice in writing to such insurer, organization, group, or association, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, in which such noncompliance shall be corrected. Notices and filings of underwriting rules required under this section shall be confidential as between the commissioner and the parties.

(b) The commissioner shall not find that a policy form, certificate, or contract of insurance or rider does not comply with the applicable requirements and standards of this title on the ground that it excludes coverage of claims made by a member of a household against another member of the same household. Such exclusions are in conformity with the public policy of this state.

(c) Repealed.

(3) (a) If the commissioner has good cause to believe that such noncompliance is willful or if, within the period prescribed by the commissioner in the notice required by



subsection (2) of this section, the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, the commissioner may hold a public hearing in connection therewith. Within a reasonable period of time, not less than ten days before the date of such hearing, he shall mail a written notice of the hearing to such insurer, organization, group, or association. The notice given under this subsection (3) shall state in what manner and to what extent noncompliance is alleged to exist and the matters to be considered at such hearing. The hearing shall not include subjects not specified in the notice. The hearing shall be conducted in accordance with section 24-4-105, C.R.S., and the commissioner shall have all the powers granted in said section.

(b) Any insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance aggrieved by an order or decision of the commissioner made without a hearing may, within thirty days after notice of the order or decision to the corporation, make written application to the commissioner for a hearing thereon. The commissioner shall hold a hearing as provided in the applicable provisions of article 4 of title 24, C.R.S. Within fourteen days after such hearing, the commissioner shall affirm, reverse, or modify his previous action, specifying his reasons therefor.

(4) If, after a hearing pursuant to subsection (3) of this section, the commissioner finds:

(a) That any rate, rating plan, or rating system violates the provisions of this title applicable to it, the commissioner may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited. In such order the commissioner may require the excess premium plus a maximum of eighteen percent interest to be refunded to the policyholder. The amount of the refund, plus interest, shall be computed from the effective date of the rate used on the individual policyholder contract to the commencement date of the hearing on the rate. Interest shall be computed as simple interest per annum.

(b) That an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance is in violation of the provisions of this title applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a specified time thereafter;

(c) That any policy form, policy, certificate, contract of insurance or rider, or any portion or any proposal thereof made by advisory or rating organizations contains any provision or style of presentation which is deceptive or misleading or renders its use hazardous to the public or the policyholders or otherwise does not comply with the requirements of law, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, prohibiting the further use of any such form in this state;

(d) That the violation of any of the provisions of this title applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(e) That any rating organization has willfully engaged in any fraudulent or dishonest act or practice, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this title.

(5) In addition to other remedies or penalties provided by law:

(a) The commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer which fails to comply with an order of the commissioner within the time limited by such order. The commissioner shall not suspend or revoke the license or certificate of authority for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been

taken, until such order has been affirmed. The commissioner may determine when a suspension or revocation of license or certificate of authority shall become effective. An order of suspension shall remain in effect for the period fixed by the commissioner, unless he modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation.

(b) If a failure to comply with an order of the commissioner within the time limited by such order is willful, the rating organization or insurer shall be liable to the state in an amount not exceeding five thousand dollars for such failure. The commissioner shall collect the amount so payable and may bring a civil action in the name of the people of the state of Colorado to enforce collection. Such penalty may be in addition to the remedy provided in paragraph (a) of this subsection (5). All moneys collected by the commissioner under this paragraph (b) shall be paid into the general fund of the state of Colorado.

(6) Any findings, determination, rule, ruling, or order made by the commissioner shall be subject to judicial review by the court of appeals, and proceedings on review shall be in accordance with the provisions of section 24-4-106 (11), C.R.S.

(7) This section shall apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section, that the commissioner determines to be anticompetitive, as described in section 10-4-415.

**Source:** L. 79: Entire part R&RE, p. 374, § 8, effective July 1. L. 86: (1), (2), and (4)(c) amended, p. 580, § 5, effective July 1. L. 91: (4)(a) amended, p. 1199, § 6, effective April 11. L. 92: (6) amended, p. 1558, § 58, effective May 20; (2)(c) added, p. 1758, § 2, effective June 5. L. 99: (7) added, p. 387, § 6, effective January 15, 2000. L. 2007: (2)(c) repealed, p. 1922, § 3, effective January 1, 2008.

**Editor's note:** This section is similar to former §§ 10-4-317 and 10-4-406 as they existed prior to 1979.

## ANNOTATION

**Rational basis test applicable to equal protection challenge of household exclusion provision** where no fundamental right or suspect class is at issue. *Allstate v. Feghali*, 814 P.2d 863 (Colo. 1991); *Mayo v. Nat'l Farmers Union Prop. & Cas. Co.*, 833 P.2d 54 (Colo. 1992).

**Household exclusions in automobile liability policies** do not violate legislative purpose and the public policy underlying this section. *Allstate v. Feghali*, 814 P.2d 863 (Colo. 1991); *Mayo v. Nat'l Farmers Union Prop. & Cas. Co.*, 833 P.2d 54 (Colo. 1992); *Brna v. Farmers Ins. Exch.*, 897 P.2d 851 (Colo. App. 1994).

Nor do they violate policy holders' right to equal protection guaranteed by the Colorado and United States constitutions. *Allstate v. Feghali*, 814 P.2d 863 (Colo. 1991).

Nor do they transform automobile defined in insurance policy as an "insured automobile" into an "uninsured automobile" for purpose of allowing insured to receive uninsured motorist

benefits. *Allstate v. Feghali*, 814 P.2d 863 (Colo. 1991); *Mayo v. Nat'l Farmers Union Prop. & Cas. Co.*, 833 P.2d 54 (Colo. 1992).

Nor do they infringe upon fundamental right to travel. *Mayo v. Nat'l Farmers Union*, 833 P.2d 54 (Colo. 1992).

**Household exclusion clause in automobile insurance policies issued before effective date of this section is unenforceable.** The provision in this section stating that exclusion clauses are compatible with state public policy applies prospectively. *People v. Dillings*, 884 P.2d 275 (Colo. 1994).

**Use of the phrase "claims made by a member of a household against another member of the same household" in subsection (2)(b) evidences a clear intent to permit "household exclusions",** but this language does not redeem a separate "named insured exclusion." *Dotson v. Pearson*, 903 P.2d 19 (Colo. App. 1994), *aff'd*, 913 P.2d 27 (Colo. 1996).

**10-4-419. Claims-made policy forms.** (1) No insurer shall use or issue any policy, certificate, or contract of insurance or any portion thereof which provides coverage on a



claims-made basis unless it has been certified by the insurer and the insurer has filed a certification with the commissioner that such policy endorsement or disclosure form or any portion thereof which provides coverage on a claims-made basis conforms to Colorado law pursuant to subsection (2) of this section and any rules and regulations promulgated pursuant to subsection (3) of this section.

(2) A claims-made policy shall not be delivered or issued for delivery to any person in this state unless:

(a) The insurer defines the nature of the risks or exposures to be insured on the claims-made policy;

(b) (I) The policy contains clear and adequate disclosure and alerts the insured to the fact that the policy is a claims-made policy and explains the unique features distinguishing it from an occurrence policy and relating to renewal, extended reporting periods, and coverage of occurrences with long periods of exposure. The commissioner shall promulgate regulations which establish proof of delivery and acceptance thereof by the policyholder and set forth the contents and format of the minimum disclosures required under this article.

(II) Such disclosures shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the exceptions, reductions, and limitations contained in the policy;

(C) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums;

(D) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The policy clearly defines the events and conditions which trigger coverage and defines when and how a claim is deemed to be made or is deemed made;

(d) The policy offers, at the insured's option, the purchase of an extended reporting period of at least one year for claims not filed during the policy period. The premium may not exceed two hundred percent of the expiring policy premium unless the adjusted premium is determined by the commissioner to be inadequate based upon section 10-4-403 and based upon an opinion of a qualified actuary submitted on behalf of the insurer.

(e) The policy requires insurers to furnish policyholders, upon their request and within thirty days thereafter, sufficient information about closed or paid claims, claims for which the company has established reserves, and claims for which the company has received notices of occurrences which could give rise to claims to allow the insured to determine how much of his aggregate coverage remains available under the policy;

(f) The insured approves and acknowledges, by signature on the written endorsement, any exclusionary endorsement which excludes coverage in a renewal period for claims from certain known occurrences, events, products, or locations;

(g) All persons engaged in the sale, consultation, or adjustment of the claims-made policy have been trained and certified pursuant to the standards and procedures set forth in regulations promulgated by the commissioner.

(3) (a) The commissioner may prohibit the use of a claims-made liability policy if the policy does not contain one or more of the following policy provisions:

(I) (Deleted by amendment, L. 2000, p. 466, § 5, effective August 2, 2000.)

(II) A policy provision that, in the event of cancellation or nonrenewal for any reason, the policy guarantees the insured the right of a sixty-day period to purchase coverage for an extended reporting period as provided in subparagraph (III) of this paragraph (a); or

(III) A policy provision that, at the insured's option, the insured may purchase coverage for an extended reporting period of at least the length of time of exposure under the applicable statute of limitation.

(IV) (Deleted by amendment, L. 2000, p. 466, § 5, effective August 2, 2000.)

(b) (Deleted by amendment, L. 2000, p. 466, § 5, effective August 2, 2000.)

(4) If a standardized claims-made policy form, proposed by a rating or advisory organization, has been filed with the commissioner and certified by the rating or advisory organization to be in compliance with statutory mandates, an insurer may utilize such a form.

(5) As used in this section, unless the context otherwise requires, "claims-made policy" means a policy of liability insurance that provides coverage for those claims that are made or reported to the insurance carrier, as is required in the policy, during the term of the policy or for such extended reporting term for which coverage has been purchased. A "claims-made policy" may include coverage for events occurring before the current policy term.

(6) This section shall not apply to any public entity self-insurance pool formed pursuant to section 24-10-115.5, C.R.S., or to any policy, certificate, or contract of insurance offered or issued by an insurer to such a pool.

(6.5) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

(7) All insurers providing insurance on a claims-made basis and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy form, endorsement, disclosure form, or any other evidence of coverage issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that each policy form, endorsement, or disclosure form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(8) All insurers providing insurance on a claims-made basis and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, or disclosure form at least thirty-one days before using such policy form, endorsement, or disclosure form. Such listing shall also contain a certification by an officer of the organization that each new policy form, endorsement, or disclosure form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(9) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether claims-made policy forms, endorsements, or disclosure forms comply with the certification of the insurer and statutory mandates.

**Source:** **L. 86:** Entire section added, p. 581, § 6, effective July 1. **L. 87:** (2)(d) amended, p. 427, § 7, effective May 1. **L. 92:** (1), IP(2), IP(3)(a), and (4) amended and (7) to (9) added, p. 1558, § 59, effective May 20. **L. 96:** (2)(d) and (3)(a)(III) amended, p. 571, § 1, effective July 1. **L. 99:** (6.5) added, p. 388, § 7, effective January 15, 2000. **L. 2000:** (3) amended, p. 466, § 5, effective August 2.

**Cross references:** For the legislative declaration contained in the 2000 act amending subsection (3), see section 1 of chapter 135, Session Laws of Colorado 2000.

**10-4-420. Risk management procedures.** Every insurer writing commercial property and casualty insurance in this state shall establish procedures to promote the use of loss control programs, safety programs, and other methods of risk management by its insureds to the extent feasible or practicable for the individual insured.

**Source:** **L. 88:** Entire section added, p. 402, § 1, effective April 29.

**10-4-421. Notice of rate increases and decreases.** (1) In the event that a rate filing for type II insurance for commercial liability includes a rate increase or decrease, the filing entity shall clearly identify in a cover letter accompanying the rate filing the specific portion of the rate filing that represents such an increase or decrease and shall state clearly the percentage of any such proposed increase or decrease.

(2) This section shall not apply to insurers providing coverage for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.



**Source: L. 88:** Entire section added, p. 404, § 1, effective May 17. **L. 99:** Entire section amended, p. 388, § 8, effective January 15, 2000.

## PART 5

### COLORADO INSURANCE GUARANTY ASSOCIATION ACT

**10-4-501. Short title.** This part 5 shall be known and may be cited as the “Colorado Insurance Guaranty Association Act”.

**Source: L. 71:** p. 756, § 1. **C.R.S. 1963:** § 72-34-1.

**10-4-502. Legislative declaration.** The purposes of this part 5 are to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

**Source: L. 71:** p. 756, § 1. **C.R.S. 1963:** § 72-34-2.

## ANNOTATION

**Intent to protect the public.** In enacting the CIGA, the general assembly intended to protect the public and did not intend to hinder or foreclose its recovery by requiring a claimant to litigate to recover the full amount of the uninsured motorist coverage rather than entering into a settlement. The public and judicial policies in Colorado favor the settlement of such disputes.

*Colo. Ins. Guar. Ass’n v. Harris*, 827 P.2d 1139 (Colo. 1992).

**Penalties are not “covered claims”;** and, therefore, statutory penalties otherwise available to claimants under the workers’ compensation law may not be assessed against the association. *Mosley v. Indus. Claim Appeals Office*, 119 P.3d 576 (Colo. App. 2005).

**10-4-503. Definitions.** As used in this part 5, unless the context otherwise requires:

- (1) “Account” means any one of the three accounts created by section 10-4-506.
- (2) “Association” means the Colorado insurance guaranty association created under section 10-4-506.
- (3) “Commissioner” means the commissioner of insurance of this state.
- (4) (a) “Covered claim” means an unpaid claim, including one for unearned premiums:
  - (I) That arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part 5 applies issued by an insurer if such insurer becomes an insolvent insurer after July 1, 1971; and
  - (II) With respect to which the claimant or insured is a resident of this state at the time of the insured event or the claim is a first-party claim for damage to property with a permanent location in this state.
- (b) “Covered claim” does not include:
  - (I) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; except that:
    - (A) A claim for any such amount asserted against a person insured under a policy issued by an insurer that has become insolvent and which claim would be a covered claim if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association may be filed directly with the receiver or the insolvent insurer; and
    - (B) In no event may any such claim be asserted in any legal action against the insured of such insolvent insurer.
  - (II) A first-party claim by an insured whose net worth exceeds ten million dollars on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer. An insured’s net worth on such date includes the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis.

(III) Any claim for incurred but not reported losses; except that nothing in this subparagraph (III) affects any covered claims or rights under this part 5.

(5) "Insolvent insurer" means an insurer licensed to transact insurance business in this state, either at the time the policy was issued or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile or of this state and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

(6) "Member insurer" means any person who writes any kind of insurance to which this part 5 applies under section 10-4-504, including the exchange of reciprocal or interinsurance contracts, and who is licensed to transact insurance business in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part 5 applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers and reinsurers.

(8) "Person" means any individual, corporation, partnership, association, or voluntary organization.

**Source:** L. 71: p. 756, § 1. C.R.S. 1963: § 72-34-5. L. 77: (4) amended, p. 513, § 1, effective May 27. L. 79: (5) amended, p. 385, § 1, effective May 31. L. 99: (4) amended, p. 86, § 1, effective August 4. L. 2011: (4) amended, (HB 11-1041), ch. 14, p. 38, § 1, effective August 10.

#### ANNOTATION

"Covered claim" is a claim that should have been paid by the insurer pursuant to the policy but for the insurer's insolvency. *Barr v. Colo. Ins. Guar. Ass'n*, 926 P.2d 102 (Colo. App. 1995).

**Statutory limit per claim depends on terms of policy.** Directors' liability in failing to inves-

tigate borrower resulted in one collective claim under insurance policy, and CIGA was obligated to pay statutory limits for only one claim on behalf of insolvent insurer. *Barr v. Colo. Ins. Guar. Ass'n*, 926 P.2d 102 (Colo. App. 1995).

**10-4-504. Scope.** This part 5 shall apply to all kinds of direct insurance, except life, title, surety, sickness and accident, disability, credit, mortgage guaranty, financial guaranty, and ocean marine insurance.

**Source:** L. 71: p. 756, § 1. C.R.S. 1963: § 72-34-3. L. 77: Entire section amended, p. 513, § 4, effective May 27. L. 89: Entire section amended, p. 454, § 1, effective April 17. L. 99: Entire section amended, p. 87, § 2, effective August 4.

**10-4-505. Construction.** This part 5 shall be liberally construed to effect the purposes enumerated in section 10-4-502, which section shall constitute an aid and guide to interpretation.

**Source:** L. 71: p. 756, § 1. C.R.S. 1963: § 72-34-4.

#### ANNOTATION

**Applied** in *Colo. Ins. Guar. Ass'n v. Harris*, 827 P.2d 1139 (Colo. 1992).

**10-4-506. Colorado insurance guaranty association.** There is created a nonprofit unincorporated legal entity to be known as the Colorado insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance business in this state. The association shall perform its



functions under a plan of operation established and approved under section 10-4-509 and shall exercise its powers through a board of directors established under section 10-4-507. For purposes of administration and assessment, the association shall be divided into three separate accounts: Workers' compensation insurance account; automobile insurance account; and the account for all other insurance to which this part 5 applies.

**Source:** L. 71: p. 757, § 1. C.R.S. 1963: § 72-34-6. L. 90: Entire section amended, p. 559, § 17, effective July 1.

**10-4-507. Board of directors.** (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for actual and necessary expenses incurred by them as members of the board of directors.

**Source:** L. 71: p. 757, § 1. C.R.S. 1963: § 72-34-7.

**10-4-508. Powers and duties of association.** (1) The association shall:

(a) (I) Be obligated to the extent of the covered claims existing prior to a determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if the insured does so within thirty days after such determination, but such obligation includes only that amount of each covered claim that is less than fifty thousand dollars; except that:

(A) For an order of liquidation with a finding of insolvency by a court of competent jurisdiction entered between July 1, 1988, and August 10, 2011, such obligation includes only that amount of each covered claim that is less than one hundred thousand dollars;

(B) For an order of liquidation with a finding of insolvency by a court of competent jurisdiction entered on or after August 10, 2011, such obligation includes only that amount of each covered claim that is less than three hundred thousand dollars; and

(C) Notwithstanding sub-subparagraph (A) or (B) of this subparagraph (I), the association shall pay the full amount of any covered claim arising out of workers' compensation policies.

(II) In no event is the association obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(III) Notwithstanding any other provision of this part 5, a covered claim does not include any claim filed with the guaranty fund after the earlier of:

(A) Twenty-four months after the date of the order of liquidation; or

(B) The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers amounts separately for each account necessary to pay: The obligations of the association under paragraph (a) of this subsection (1) subsequent to an insolvency; the expenses of handling covered claims subsequent to an insolvency; the cost of examinations under section 10-4-513; and other expenses authorized by this part 5. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Each member insurer shall

be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; but during the period of deferment no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payment shall be refunded to those companies receiving larger assessments by virtue of such deferment or, in the discretion of any such company, credited against future assessments. Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation, and deny all other claims, and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested;

(e) Notify such persons as the commissioner directs under section 10-4-510 (2) (a);

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part 5.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) Borrow funds necessary to effect the purposes of this part 5 in accord with the plan of operation;

(c) Sue or be sued, and such power to sue includes the power and right to intervene as a party before any court in this state that has jurisdiction over an insolvent insurer, as defined in section 10-4-503 (5);

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part 5;

(e) Perform such other acts as are necessary or proper to effectuate the purposes of this part 5;

(f) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

**Source:** L. 71: p. 758, § 1. C.R.S. 1963: § 72-34-8. L. 77: (1)(a) amended, p. 514, § 3, effective May 27. L. 88: (1)(a) amended, p. 407, § 1, effective July 1. L. 90: (1)(a) amended, p. 559, § 18, effective July 1. L. 99: (2)(c) amended, p. 87, § 4, effective August 4. L. 2002: (1)(c) amended, p. 75, § 1, effective March 22. L. 2011: (1)(a) amended, (HB 11-1041), ch. 14, p. 39, § 2, effective August 10.



## ANNOTATION

**Limitation imposed by subsection (1)(a) is constitutional** because it is reasonably related to legitimate governmental purposes such as ensuring finality and the prompt recovery of reimbursement from the estates of insolvent insurers. *Alexander v. Indus. Claim Appeals Office*, 42 P.3d 46 (Colo. App. 2001).

**Automobile accident victim entitled only to statutory maximum from fund** even though victim obtained judgment in excess of \$145,000 against company insured by insolvent insurer. *Fontenot v. Haight*, 764 P.2d 378 (Colo. App. 1988) (decided prior to 1988 amendment).

**The state insurance guaranty association was required to "step into the shoes" of the**

**insolvent insurance company and defend the insureds of the bankrupt company** after the claimant was found entitled to maintain her claim for the amount between the limits of her own insurance policy and the state insurance guaranty association's statutory limit. *Colo. Ins. Guaranty Assn. v. Harris*, 815 P.2d 983 (Colo. App. 1991).

**Claimant that filed initial proof of claim six months after deadline for filing such proofs of claim** cannot obtain reimbursement for claims it had to pay as a result of a liquidated insurer's insolvency. *Colaianne v. Aspen Indem. Corp.*, 885 P.2d 337 (Colo. App. 1994).

**10-4-508.5. Aggregate liability of association.** (1) (a) Notwithstanding any other provisions of this part 5, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars shall have been paid in the aggregate by the association and any one or more associations similar to the association of any other state or states or any property/casualty insurance security fund that obtains contributions from insurers on a pre-insolvency basis, to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer.

(b) For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(2) If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association or any associations similar to the association or any property/casualty insurance security fund in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association in its discretion deems equitable.

**Source: L. 99:** Entire section added, p. 87, § 3, effective August 4.

**10-4-509. Plan of operation.** (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(2) If the association fails to submit a suitable plan of operation within ninety days following July 1, 1971, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part 5. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(3) All member insurers shall comply with the plan of operation.

(4) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under section 10-4-508 will be performed;

(b) Establish procedures for handling assets of the association;

(c) Establish the amount and method of reimbursing members of the board of directors under section 10-4-507;

(d) Establish procedures by which claims may be filed with the association and provide acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of

such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors;

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision;

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(5) The plan of operation may provide that any or all powers and duties of the association, except those under section 10-4-508 (1) (c) and (2) (c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection (5) shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part 5.

**Source:** L. 71: p. 759, § 1. C.R.S. 1963: § 72-34-9.

**10-4-510. Duties and powers of commissioner.** (1) The commissioner shall:

(a) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency;

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part 5. Such notification shall be by first-class mail at their last known addresses, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Require each agent of the insolvent insurer to give prompt written notice to each insured of the insolvent insurer for whom he was agent of record by sending such notice by first-class mail to the insured's last known address;

(c) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. Such fine shall not exceed five percent of the unpaid assessment per month; except that no fine shall be less than one hundred dollars per month.

(d) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part 5 shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 71: p. 760, § 1. C.R.S. 1963: § 72-34-10. L. 92: (3) amended, p. 1559, § 60, effective May 20.

**10-4-511. Effect of paid claims.** (1) Any person recovering under this part 5 from the association shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this part 5 shall cooperate with the association to the same extent as such



person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this part 5 against the assets of the insolvent insurer. The expenses of the association or a similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of an insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent insurer.

(4) (a) The association shall have the right to recover from the following persons the amount of any covered claim paid on behalf of such person pursuant to this part 5:

(I) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part 5. An insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; and

(II) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part 5.

(b) The association and any similar organization in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims obligations as determined under this part 5 or similar laws in other states and shall receive dividends and any other distributions at the priority set forth in part 5 of article 3 of this title. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this part 5 and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this part 5 against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

**Source:** L. 71: p. 761, § 1. C.R.S. 1963: § 72-34-11. L. 77: (2) amended, p. 514, § 4, effective May 27. L. 99: (4) added, p. 87, § 5, effective August 4.

**10-4-512. Nonduplication of recovery.** (1) Any person having a claim against an insurer under any provision in any insurance policy that is also a covered claim shall exhaust first the person's right under such policy. Any amount payable on a covered claim under this part 5 is reduced by the amount recoverable under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured; except that, if it is a first-party claim for damage to property with a permanent location, recovery shall be sought from the association of the location of the property, and, if it is a workers' compensation claim, recovery shall be sought from the association of the residence of the claimant. A claimant or first-party insured who has received a recovery from any other guaranty association or its equivalent in an amount equal to or greater than the recovery allowed under this part 5 shall not be eligible to receive any recovery from the Colorado insurance guaranty association. In addition, any recovery under this part 5 shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

**Source:** L. 71: p. 761, § 1. C.R.S. 1963: § 72-34-12. L. 89: (2) amended, p. 454, § 2, effective April 17. L. 90: (2) amended, p. 559, § 19, effective July 1. L. 99: (2) amended, p. 88, § 6, effective August 4. L. 2011: (1) amended, (HB 11-1041), ch. 14, p. 40, § 3, effective August 10.

#### ANNOTATION

**Section implicitly provides Colorado insurance guaranty association (CIGA) with cause of action to enforce provision.** The general assembly expressly provided for nonduplication of recovery to conserve CIGA's resources and impliedly intended to create private civil remedy for CIGA to enforce its right to reduce its payments to avoid duplication of recovery by insureds. The legislative goal of nonduplication of recovery would be substantially frustrated if CIGA lacked a civil remedy to enforce its statutory rights. Colo. Ins. Guar. Ass'n v. Menor, 166 P.3d 205 (Colo. App. 2007).

CIGA not required to intervene in defendant's earlier settlement proceedings with UM/UMI carrier in order to bring claim for offset under this section, and district court has subject matter jurisdiction to determine amount of CIGA's claimed offset, if any, allowed under this section and to apportion economic and noneconomic damages in defendant's settlement with UM/UMI carrier. Colo. Ins. Guar. Ass'n v. Menor, 166 P.3d 205 (Colo. App. 2007).

While CIGA, acting as worker's compensation insurer, does not have subrogation rights against UM/UMI insurance benefits under § 8-41-203, CIGA has claim for relief for nonduplication of recovery under this section with respect to any recovery by an injured party against his or her insurer that is also a covered claim under the Colorado Insurance Guaranty Association Act. Colo. Ins. Guar. Ass'n v. Menor, 166 P.3d 205 (Colo. App. 2007).

**Claimant satisfied the statutory requirement that she must exhaust her rights against her insurer** because she negotiated a settlement of slightly less than her policy limits for uninsured motorists, and was thus entitled to make a claim against the state insurance guaranty association for up to the difference between her policy limit and CIGA's statutory limit. Colo. Ins. Guaranty Assn. v. Harris, 815 P.2d 983 (Colo. App. 1991); aff'd, 827 P.2d 1139 (Colo. 1992).

**10-4-513. Prevention of insolvencies.** (1) To aid in the detection and prevention of insurer insolvencies, it is the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating that any member insurer may be insolvent or is in a financial condition hazardous to the policyholders or the public.

(2) To aid in the detection and prevention of insurer insolvencies, it is the duty of the commissioner:

(a) To notify the commissioners of all other states and territories of the United States and the District of Columbia by mail within thirty days of any of the following actions taken by him against a member insurer:

(I) Revocation of license;

(II) Suspension of license;

(III) Any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(b) To report to the board of directors when he has taken any of the actions set forth in paragraph (a) of this subsection (2) or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(c) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be insolvent or in a financial condition hazardous to the policyholders or the public;

(d) To furnish to the board of directors the early warning tests developed by the national association of insurance commissioners. The board of directors may use the information contained in such tests in carrying out its duties and responsibilities pursuant to this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner of another lawful authority.

(3) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the



financial condition of member companies and companies seeking admission to transact insurance business in this state.

(4) The board of directors, upon majority vote, may make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do business in this state. Such reports and recommendations shall not be considered public documents.

(5) It is the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(6) The board of directors, upon majority vote, may request that the commissioner order an examination of any member insurer which the board in good faith believes to be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(7) The board of directors, upon majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(8) The board of directors, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, shall prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer and may adopt by reference any report prepared by such other associations.

**Source:** L. 71: p. 762, § 1. C.R.S. 1963: § 72-34-13. L. 77: Entire section R&RE, p. 514, § 5, effective May 27.

**10-4-514. Examination of association.** The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

**Source:** L. 71: p. 762, § 1. C.R.S. 1963: § 72-34-14.

**10-4-515. Tax exemption.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

**Source:** L. 71: p. 762, § 1. C.R.S. 1963: § 72-34-15.

**10-4-516. Recognition of assessments in rates.** The rates and premiums charged for insurance policies to which this part 5 applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer, less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

**Source:** L. 71: p. 762, § 1. C.R.S. 1963: § 72-34-16.

**10-4-517. Immunity.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this part 5.

**Source:** L. 71: p. 763, § 1. C.R.S. 1963: § 72-34-17.

#### ANNOTATION

**Immunity conferred by this section is absolute** and includes immunity from penalties that would otherwise be available under § 8-43-

304 (1). Mosley v. Indus. Claim Appeals Office, 119 P.3d 576 (Colo. App. 2005).

**10-4-518. Stay of proceedings.** All proceedings to which an insolvent insurer is a party in any court in this state shall be stayed for sixty days after the date the insolvency is determined to permit proper defense by the association of all pending causes of action.

**Source:** L. 71: p. 763, § 1. C.R.S. 1963: § 72-34-18.

**Cross references:** For stay of proceedings to permit proper defense by the Colorado insurance guaranty association, see § 10-4-508 (1)(d) regarding the exercise of powers and duties relevant thereto.

**10-4-519. Termination - distribution of funds.** (1) The commissioner shall by order terminate the operation of the association as to any kind of insurance covered by this part 5 with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend, to the Colorado policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kinds of insurance under this part 5.

(2) The commissioner shall by the same order authorize discontinuance of future payments by insurers to the association with respect to the same kinds of insurance; but the assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of the association is so terminated as to all kinds of insurance otherwise within its scope, the association as soon as possible thereafter shall distribute the balance of moneys and assets remaining after discharge of the functions of the association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses, to the insurers which are then writing in this state policies of the kinds of insurance covered by this part 5 and which have made payments to the association pro rata upon the basis of the aggregate of such payments made by the respective insurers during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the kinds of insurance covered by this part 5, this part 5 shall be deemed to be repealed.

**Source:** L. 71: p. 763, § 1. C.R.S. 1963: § 72-34-19.

**10-4-520. Advertising.** No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station or in any other way any



advertisement, announcement, or statement which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this part 5, but this section shall not apply to the Colorado insurance guaranty association or to any other entity which does not sell or solicit insurance.

**Source:** L. 77: Entire section added, p. 516, § 6, effective May 27.

## PART 6

### AUTOMOBILE INSURANCE POLICY - REGULATIONS

**Cross references:** For abuse of property insurance, see § 18-13-119.5.

**10-4-601. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) Repealed.

(2) "Complying policy" means a policy of insurance that provides the coverages and is subject to the terms and conditions required by this part 6, and is certified by the insurer and the insurer has filed a certification with the commissioner that such policy, contract, or endorsement conforms to Colorado law and any rules promulgated by the commissioner.

(3) "Converter" means a person other than a named insured or resident relative who operates or uses a motor vehicle in a manner that a reasonable person would determine was unauthorized or beyond the scope of permission given by a named insured or resident relative. In determining whether a person is a converter, the following factors should be considered:

(a) The duration of the person's control over the motor vehicle;

(b) The circumstances surrounding the conduct of the person operating or using the motor vehicle; and

(c) The person's good faith.

(4) "Described motor vehicle" means the motor vehicle described in the complying policy.

(5) "Insured" means the named insured, relatives of the named insured who reside in the same household as the named insured, and any person using the described motor vehicle with the permission of the named insured.

(5.5) "Licensed health care provider" means a person, corporation, facility, or institution licensed or certified by this state to provide health care or professional services as a hospital, health care facility, or dispensary or to practice and practicing medicine, osteopathy, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, acupuncture, or optometry in this state, or an officer, employee, or agent of the person, corporation, facility, or institution working under the supervision of the person, corporation, facility, or institution in providing health care services.

(6) "Motor vehicle" means a "motor vehicle" and a "low-power scooter", as both terms are defined in section 42-1-102, C.R.S.; except that "motor vehicle" does not include a toy vehicle, snowmobile, off-highway vehicle, or vehicle designed primarily for use on rails.

(7) "Nonpayment of premium" means failure of the named insured to discharge when due any obligations in connection with the payment of premiums on the policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

(8) "Owner" means a person who holds the legal title to a vehicle; except that, if the vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of the vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this part 6.

(9) "Person" means every natural person, firm, partnership, association, or corporation.

(10) “Policy” means an automobile insurance policy providing coverage for all or any of the following coverages: Collision, comprehensive, bodily injury liability, property damage liability, medical payments, and uninsured motorist coverage, or a combination automobile policy providing bodily injury liability, property damage liability, medical payments, uninsured motorist, and physical damage coverage, delivered or issued for delivery in this state, insuring a single individual, or husband and wife, or family members residing in the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

(a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others pursuant to the terms of a motor vehicle rental agreement; or

(b) Any other four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less that is not used in the occupation, profession, or business of the insured.

(11) “Renewal” or “to renew” means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term; but any policy with a policy period or term of less than six months shall, for the purpose of this part 6, be considered as if written for a policy period or term of six months; and any policy written for a term longer than one year, or any policy with no fixed expiration date, shall, for the purpose of this part 6, be considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving twenty days’ notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of this part 6.

(12) Repealed.

(13) “Resident relative” means a person who, at the time of the accident, is related by blood, marriage, or adoption to the named insured or resident spouse and who resides in the named insured’s household, even if temporarily living elsewhere, and any ward or foster child who usually resides with the named insured, even if temporarily living elsewhere.

(14) “Stacking” has the same meaning set forth in section 10-4-402 (3.5).

**Source:** L. 69: p. 549, § 1. C.R.S. 1963: § 72-30-1. L. 92: (4) added, p. 1759, § 3, effective June 5. L. 95: (2)(a) amended, p. 142, § 2, effective April 7. L. 2003: Entire section amended, p. 1558, § 1, effective July 1; (1) amended and (1.5) and (3.5) added, p. 2554, § 1, effective July 1. L. 2004: (6) amended, p. 11, § 2, effective February 20. L. 2007: (1) and (12) repealed, p. 974, § 3, effective May 18. L. 2009: (6) amended, (HB 09-1026), ch. 281, p. 1253, § 1, effective July 1, 2010. L. 2010: (5.5) added, (HB 10-1220), ch. 197, p. 855, § 18, effective July 1.

**Editor’s note:** Amendments to this section by House Bill 03-1253 and House Bill 03-1188 were harmonized, resulting in the renumbering of provisions of this section.

## ANNOTATION

**Annotator’s note.** Since this section is similar to former § 10-4-601 as it existed prior to its 2003 amendment and to § 10-4-703 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing those provisions have been included in the annotations to this section.

The phrase “unless the context otherwise requires” does not suggest that the definitions contained in this section apply to all uninsured motorist coverage provisions. If such were the case, the language limiting the defini-

tions to “this part 7” would always be over-ridden by the exception. *State Farm Mut. Auto. Ins. Co. v. Stein*, 924 P.2d 1154 (Colo. App. 1996), *aff’d*, 940 P.2d 384 (Colo. 1997).

**Policy provision cannot limit scope of insureds** to whom compulsory coverage must be provided. *Truck Ins. Exch. v. Home Ins. Co.*, 841 P.2d 354 (Colo. App. 1992).

The definition of “insured” under subsection (5) specifically allows liability coverage to be predicated upon using a motor vehicle described in the policy. The third category of



"insureds" is, by definition, vehicle-dependent. *Farmers Ins. Exch. v. Anderson*, 260 P.3d 68 (Colo. App. 2010).

**The plain import of subsection (6) is that an insurer is not required to extend coverage to any person who uses the vehicle without the permission of the named insured.** The permissive use exclusion in insured's insurance policy is not in violation of the "Colorado Auto Accident Reparations Act" because it does not limit the compulsory classification of insureds to whom the insurer is obligated to provide coverage. The provision constitutes a valid exclusion by which a non-permissive user of a vehicle is exempt from coverage as an insured pursuant to the statute. *Winscom v. Garza*, 843 P.2d 126 (Colo. App. 1992); *McConnell v. St. Paul Fire and Marine Ins. Co.*, 906 P.2d 109 (Colo. 1995).

**Once a named insured grants initial permission to use the insured vehicle, the named insured impliedly consents to use of the vehicle by subsequent permittees unless their "permission" to use the vehicle emanates from a converter.** *Raitz v. State Farm Mut. Auto. Ins. Co.*, 960 P.2d 1179 (Colo. 1998).

**If the definition of "permissive user" in the insurance policies is more restrictive than the language of the Colorado Auto Accident Reparations Act, the policies must be interpreted in accord with the Act, as clauses in an insurance contract which attempt to dilute, condition, or limit statutorily mandated coverage are invalid or void.** *Wiglesworth v. Farmers Ins. Exch.*, 917 P.2d 288 (Colo. 1996).

**Exclusion of state, federal, police, and fire vehicles permissible exercise of police power.** *Bushnell v. Sapp*, 194 Colo. 273, 571 P.2d 1100 (1977).

**Definition of "motor vehicle"** does not include snowmobiles. Uninsured motorist statute does not require coverage for accidents involving snowmobiles used off public roads. *Keely v. Allstate Ins. Co.*, 835 P.2d 584 (Colo. App. 1992).

**Definition of "motor vehicle" applies to any vehicle with the physical characteristics that require registration and licensing, regardless of whether the vehicle is actually registered and licensed in Colorado.** Thus, the Act may extend to vehicles registered and licensed in another state. *Ranger v. Fortune Ins. Co.*, 881 P.2d 394 (Colo. App. 1994).

**Subsection (8) makes it clear that a title holder is not divested of the duty to insure a vehicle merely by conditional sale or by actual use by the vendee following a conditional sale.**

It is only after entering into a conditional sale agreement that vests the right of immediate possession in the vendee. Whether the right of immediate possession vests in a conditional vendee ultimately depends upon the agreement of the parties. *Sachtjen v. Am. Family Mut. Ins. Co.*, 49 P.3d 1146 (Colo. 2002).

**Policy clause that excludes from liability coverage a certain category of permissive users because some other form of coverage exists under a separate policy** is inconsistent with the requirements of the Auto Accident Reparations Act and contrary to public policy; thus, it is unenforceable. *Finizio v. Am. Hardware Mut. Ins.*, 967 P.2d 188 (Colo. App. 1998).

**However, insurance policy's "excess clause", which made coverage secondary to other collectible insurance, was not void as an erosion of the statutory mandate of § 10-4-619 that vehicle owners carry minimum liability insurance.** Court contrasted excess clause, which limited coverage to the extent that other coverage existed, with "escape clause", whereby an insurer provides no coverage if other insurance applied. *Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 214 P.3d 489 (Colo. App. 2008), *aff'd*, 246 P.3d 651 (Colo. 2011).

**A certificate of title is prima facie evidence that a person is the "owner" of a vehicle;** however, it does not represent conclusive proof of ownership. *Martinez v. Allstate Ins. Co.*, 961 P.2d 531 (Colo. App. 1997).

**Pursuant to definition of "policy",** a snowmobile was not intended to be one of the "only" types of vehicles designated as an insured vehicle subject to the statutory "policy" provisions. *Keely v. Allstate Ins. Co.*, 835 P.2d 584 (Colo. App. 1992).

**The definition of "policy" in subsection (2) does not apply to limit the provisions of § 10-4-609.** Based on the legislative intent that all purchasers of automobile liability insurance policies must have the opportunity to purchase uninsured motorist coverage, under § 10-4-609 a car rental agreement may qualify as a "policy" and the car rental company is required to offer the lessee uninsured motorist coverage. *Passamano v. Travelers Indem. Co.*, 882 P.2d 1312 (Colo. 1994).

**Definition of "motor vehicle" in subsection (2) makes it apparent that the general assembly did not intend for a motorcycle to be type of vehicle designated as an insured vehicle subject to statutory policy provisions.** *Allstate Indem. Co. v. Gonzales*, 902 P.2d 953 (Colo. App. 1995).

**10-4-601.5. Administrative authority.** The commissioner shall administer and enforce the provisions of this part 6 and may make rules necessary for the administration of this part 6 in accordance with article 4 of title 24, C.R.S.

### ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-704 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

**Authority to issue proper regulations.** The commissioner of insurance and the director of revenue have the authority, individually or jointly, to issue proper regulations to enforce relevant statutes. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Deference given to construction of statute by administrative official.** Construction of a statute by administrative official charged with its

enforcement shall be given great deference by the courts. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**However, administrative regulations are not absolute rules.** *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**Action by administrative official in excess of authority.** When an administrative official misconstrues a statute and issues a regulation beyond the scope of a statute, it is in excess of administrative authority granted, and the regulation is invalid. *Travelers Indem. Co. v. Barnes*, 191 Colo. 278, 552 P.2d 300 (1976).

**10-4-602. Basis for cancellation.** (1) A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:

- (a) Nonpayment of premium; or
  - (b) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household or who customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding its effective date; or
  - (c) An applicant knowingly made a false statement on the application for insurance; or
  - (d) An insured knowingly and willfully made a false material statement on a claim submitted under the policy.
- (2) This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.
- (3) This section shall not apply to nonrenewal of a policy.

**Source:** L. 69: p. 550, § 2. C.R.S. 1963: § 72-30-2. L. 94: (1)(c) amended and (1)(d) added, p. 328, § 1, effective July 1.

### ANNOTATION

**Applied** in *Wright v. Newman*, 598 F. Supp. 1178 (D. Colo. 1984), *aff'd*, 767 F.2d 460 (10th Cir. 1985).

**10-4-603. Notice.** (1) No notice of cancellation of a policy to which section 10-4-602 applies shall be valid unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation; but, where cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor shall be given or, alternatively, a notice advising that the policy will be cancelled if timely payment of premium is not made may be given at least ten days but not more than thirty days prior to the premium due date. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. As used in this section, "premium due date" means the date that a premium that has been previously paid is fully earned.

(2) Where the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the effective date of



cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) This section shall not apply to nonrenewal of a policy.

**Source:** L. 69: p. 550, § 3. C.R.S. 1963: § 72-30-3. L. 96: (1) amended, p. 363, § 1, effective April 17.

#### ANNOTATION

**Section applicable to cancellation not expiration of policy.** The notice provisions set out in this section apply to unilateral cancellation by the insurer and do not apply to policy expiration. *Shelly v. Strait*, 634 P.2d 1017 (Colo. App. 1981).

**Cancellation for nonpayment of premium can occur only if payment is overdue** so that notice one month prior to the due date of a premium payment does not meet requirements of this section. *Rotenberg v. Am. Standard Ins. Co.*, 865 P.2d 905 (Colo. App. 1993).

**10-4-604. Nonrenewal.** (1) No insurer shall refuse to renew a policy unless such insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew. This section shall not apply:

- (a) If the insurer has manifested its willingness to renew;
- (b) In case of nonpayment of premium;
- (c) If the insured fails to pay any advance premium required by the insurer for renewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(4) In the event an insurer refuses to renew, the insured may, by written request, demand a written notification of the reason for nonrenewal. Such notification shall be given the insured within twenty days after receipt of such request.

**Source:** L. 69: p. 550, § 4. C.R.S. 1963: § 72-30-4. L. 96: (1) amended, p. 363, § 2, effective April 17.

#### ANNOTATION

**Applied** in *Thomason v. Schnorr*, 41 Colo. App. 546, 587 P.2d 1205 (1978).

**10-4-604.5. Issuance or renewal of insurance policies - proof of insurance provided by certificate, card, or other media.** (1) In addition to any other requirement, if an insurer issues or renews a policy of insurance, the insurer shall provide the insured a proof of insurance certificate or insurance identification card to accompany the insured's registration application or renewal card or provide proof of insurance in such other media as is authorized by the department under section 42-3-105 (1) (d), C.R.S.

(2) (Deleted by amendment, L. 2003, p. 1560, § 2, effective July 1, 2003.)

**Source:** L. 98: Entire section added, p. 787, § 6, effective July 1, 1999. L. 2000: (1) amended, p. 511, § 3, effective May 12. L. 2001: (2) amended, p. 524, § 9, effective May 22. L. 2003: Entire section amended, p. 1560, § 2, effective July 1. L. 2006: (1) amended, p. 1491, § 13, effective June 1.

**10-4-605. Proof of notice.** Proof of mailing notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy shall be sufficient proof of notice.

**Source:** L. 69: p. 551, § 5. C.R.S. 1963: § 72-30-5.

**10-4-606. Further notice.** When automobile bodily injury and property damage liability coverage is cancelled, other than for nonpayment of premium, or in the event of failure to renew automobile bodily injury and property damage liability coverage to which section 10-4-604 applies, the insurer shall notify the named insured of his possible eligibility for automobile liability insurance through an assigned risk plan established pursuant to section 10-4-412 and shall notify the insured as to where he may obtain information concerning such plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

**Source:** L. 69: p. 551, § 6. C.R.S. 1963: § 72-30-6. L. 79: Entire section amended, p. 376, § 9, effective July 1.

**10-4-607. Immunity.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, or for any statement made by any of them in any written notice of cancellation or notification of reason for nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information with respect thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

**Source:** L. 69: p. 551, § 7. C.R.S. 1963: § 72-30-7.

**10-4-608. Exemptions.** (1) This part 6 shall not apply to any policy:

- (a) Issued under an assigned risk plan established under section 10-4-412;
- (b) Insuring more than four automobiles;
- (c) Except as authorized by section 10-4-624, arising out of a motor vehicle rental agreement or any self-insurance thereof;
- (d) Covering a garage, automobile sales agency, repair shop, service station, or public parking place operation hazard; or
- (e) Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured, or on the ways immediately adjoining such premises.

**Source:** L. 69: p. 551, § 8. C.R.S. 1963: § 72-30-8. L. 79: Entire section amended, p. 376, § 10, effective July 1. L. 95: Entire section amended, p. 143, § 3, effective April 7. L. 2003: (1)(c) amended, p. 2433, § 1, effective June 5.

**10-4-609. Insurance protection against uninsured motorists - applicability.** (1) (a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle licensed for highway use in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 42-7-103 (2), C.R.S., under provisions approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; except that the named insured may reject such coverage in writing.



(b) This subsection (1) shall not apply to motor vehicle rental agreements or motor vehicle rental companies.

(c) The coverage described in paragraph (a) of this subsection (1) shall be in addition to any legal liability coverage and shall cover the difference, if any, between the amount of the limits of any legal liability coverage and the amount of the damages sustained, excluding exemplary damages, up to the maximum amount of the coverage obtained pursuant to this section. A single policy or endorsement for uninsured or underinsured motor vehicle coverage issued for a single premium covering multiple vehicles may be limited to applying once per accident. The amount of the coverage available pursuant to this section shall not be reduced by a setoff from any other coverage, including, but not limited to, legal liability insurance, medical payments coverage, health insurance, or other uninsured or underinsured motor vehicle insurance.

(2) Before the policy is issued or renewed, the insurer shall offer the named insured the right to obtain uninsured motorist coverage in an amount equal to the insured's bodily injury liability limits, but in no event shall the insurer be required to offer limits higher than the insured's bodily injury liability limits.

(3) Notwithstanding the provisions of subsection (2) of this section, after selection of limits by the insured or the exercise of the option not to purchase the coverages described in this section, no insurer nor any affiliated insurer shall be required to notify any policyholder in any renewal or replacement policy, as to the availability of such coverage or optional limits. However, the insured may, subject to the limitations expressed in this section, make a written request for additional coverage or coverage more extensive than that provided on a prior policy.

(4) Uninsured motorist coverage shall include coverage for damage for bodily injury or death that an insured is legally entitled to collect from the owner or driver of an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle, the ownership, maintenance, or use of which is insured or bonded for bodily injury or death at the time of the accident.

(5) (Deleted by amendment, L. 2007, p. 1921, § 2, effective January 1, 2008.)

(6) An alleged tortfeasor shall be deemed to be uninsured solely for the purpose of allowing the insured party to receive payment under uninsured motorist coverage, regardless of whether the alleged tortfeasor was actually insured, if:

(a) The alleged tortfeasor cannot be located for service of process after a reasonable attempt to serve the alleged tortfeasor; and

(b) (I) Service of process on the insurance carrier as authorized by section 42-7-414 (3), C.R.S., is determined by a court to be insufficient or ineffective after reasonable effort has failed; or

(II) (A) The report of a law enforcement agency investigating the motor vehicle accident fails to disclose the insurance company covering the alleged tortfeasor's motor vehicle; and

(B) The alleged tortfeasor's insurance coverage when the incident occurred is not actually known by the person attempting to serve process.

(7) Nothing in subsection (6) of this section voids the alleged tortfeasor's policy if the alleged tortfeasor was actually insured.

**Source:** L. 79: Entire section added, p. 377, § 11, effective July 1. L. 83: Entire section R&RE, p. 454, § 1, effective November 5. L. 92: (2) amended, p. 1759, § 4, effective June 5. L. 95: (1) amended, p. 143, § 4, effective April 7. L. 2007: (1)(c) added and (2), (4), and (5) amended, p. 1921, §§ 1, 2, effective January 1, 2008. L. 2010: (6) and (7) added, (HB 10-1164), ch. 196, p. 845, § 1, effective January 1, 2011.

#### ANNOTATION

**Law reviews.** For article "Underinsurance Coverage in Automobile Accidents", see 15 Colo. Law. 417 (1986). For article, "The 'Catch 22' of Underinsured Motorist Settlements", see

17 Colo. Law. 49 (1988). For article, "Recent Developments in the Law of Underinsured Motorist Coverage", see 22 Colo. Law. 2273 (1993). For article, "When an Automobile Pol-

icy Coverage Exclusion or Limitation is Valid", see 25 Colo. Law. 103 (August 1996). For article, "Bringing the Uninsured and Underinsured Motorist Case", see 26 Colo. Law. 111 (November 1997). For article, "New Uninsured Motorist Legislation Changes the Rules", see 37 Colo. Law. 67 (September 2008).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Trial court is proper forum to resolve claim for uninsured motorist benefits** and to resolve independent claim of any workers' compensation claim. Failure of plaintiff to exhaust administrative remedies regarding workers' compensation is not relevant to the issue of uninsured motorist coverage. *Benson v. Colo. Comp. Ins. Auth.*, 870 P.2d 624 (Colo. App. 1994).

**Protection from loss caused by uninsured motorists is authorized.** *Nationwide Mut. Ins. Co. v. Hillyer*, 32 Colo. App. 163, 509 P.2d 810 (1973).

**Section compels companies to extend uninsured motorist coverage.** This section compels insurance companies writing motor vehicle liability policies to extend uninsured motorist coverage unless the insured shall reject such coverage. *Morgan v. Farmers Ins. Exch.*, 182 Colo. 201, 511 P.2d 902 (1973); *Nationwide Mut. Fire Ins. Co. v. Newton*, 40 Colo. App. 425, 579 P.2d 1178 (1978), rev'd on other grounds, 197 Colo. 462, 594 P.2d 1042 (1979).

This section requires that insurance companies issuing policies on motor vehicles registered or principally garaged in this state offer uninsured motorist coverage. *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974).

However, this section does not mandate that a driver carry uninsured motorist coverage. Individual insureds are free to decline such coverage. *Cruz v. Farmers Ins. Exch.*, 12 P.3d 307 (Colo. App. 2000).

**Insurance policy exclusion of resident relatives who own a vehicle from uninsured/underinsured motorist (UM/UIM) coverage violates Colorado public policy.** *Pacheco v. Shelter Mut. Ins. Co.*, 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Where former § 10-4-703 (6) defined "insured" to include "relatives of the named insured who reside in the same household as the named insured", a policy that attempted to exclude from UM/UIM coverage vehicle-owning relatives meeting that definition is void and unenforceable. *Pacheco v. Shelter Mut. Ins. Co.*, 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

**Automobile insurance policy cannot narrow the class of individuals who were required to be covered under the former no fault act.** If a person seeking coverage was one for whom coverage was required by statute, an

insurer cannot limit its statutory obligation by a contractual provision contrary to the requirements of the no fault act. *Pacheco v. Shelter Mut. Ins. Co.*, 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

**Because UM/UIM coverage must be offered to a class coextensive with the class covered under the policy's liability provision, the exclusion of resident relatives owning vehicles is also void and unenforceable** for purposes of UM/UIM coverage. The appropriate remedy is to consider the offending provision void and provide coverage to the limits of the policy. *Pacheco v. Shelter Mut. Ins. Co.*, 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

**This section incorporates the minimum limits for bodily injury or death** as set forth in the financial responsibility act. *Nationwide Mut. Ins. Co. v. Hillyer*, 32 Colo. App. 163, 509 P.2d 810 (1973).

If uninsured motorist coverage is not rejected by the insured, the minimum amount of coverage required is as provided in the motor vehicle financial responsibility law. *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974).

**Limitation on recovery allowable.** As long as a policy assures payment of the statutory minimum, a limitation on recovery is not repugnant to the motor vehicle financial responsibility law. *Arguello v. State Farm Mut. Auto. Ins. Co.*, 42 Colo. App. 372, 599 P.2d 266 (1979).

**Coverage satisfying legislative intent.** The legislative intent is satisfied by coverage which assures that one injured by an uninsured motorist will be compensated at least to the same extent as one injured by a motorist who is insured in compliance with the motor vehicle financial responsibility law. *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974).

**Section does not apply to umbrella policies.** An umbrella liability insurance policy that includes excess liability coverage for the ownership or operation of motor vehicles is not an "automobile liability or motor vehicle liability policy" under the plain language of the section; therefore, insurer is not subject to the requirement to offer UM/UIM coverage as part of an umbrella policy. *Apodaca v. Allstate Ins. Co.*, 232 P.3d 253 (Colo. App. 2009), aff'd, 255 P.3d 1099 (Colo. 2011).

**There is a clear statutory basis for the use of a per occurrence limit on liability when two or more persons are injured.** Subsection (2) sets both per person and per accident limits for the amount of uninsured motorist coverage an insurer is required to offer an insured. Application of per occurrence limit coupled with an anti-stacking provision is not inconsistent with the purpose of Colorado's underinsured motorist statute - to place the insured in the same position



as if the underinsured had liability limits in an amount equal to an insured's coverage. *Shean v. Farmers Ins. Exch.*, 934 P.2d 835 (Colo. App. 1996).

**Attorney fees and expenses are not recoverable pursuant to this section.** *Thurman v. State Farm Mut. Auto. Ins. Co.*, 942 P.2d 1327 (Colo. App. 1997); *Loar v. State Farm Mut. Auto. Ins. Co.*, 143 P.3d 1083 (Colo. App. 2006).

**An insurance policy provision violates this section only if it directly limits the benefits to which the insured is entitled.** *Terranova v. State Farm Mut. Auto. Ins. Co.*, 800 P.2d 58 (Colo. 1990); *Peterman v. State Farm Mut. Auto. Ins. Co.*, 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

**And the mere act of specifying a procedure for determining the insured's right to recover UM benefits from the insurer does not directly limit such benefits**, at least so long as the procedure specified is not unduly burdensome. *Peterman v. State Farm Mut. Auto. Ins. Co.*, 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

**The phrase "bodily injury, sickness, or disease" in subsection (1)(a) does not include emotional distress absent a physical manifestation of the injury.** Hence, this section does not require an insurer to provide benefits for purely emotional harm. *Williams v. State Farm Mut. Auto. Ins. Co.*, 195 P.3d 1158 (Colo. App. 2008).

**Where a motor vehicle is being used in a manner reasonably foreseeable at the time the parties contracted for insurance and the "use" of the vehicle is inextricably linked to a plaintiff's injury, plaintiff is entitled to recover under the policy.** *State Farm Mut. Auto. Ins. Co. v. Kastner*, 77 P.3d 1256 (Colo. 2003).

**Limiting underinsured benefits to bodily injuries or deaths sustained by a person insured by the policy is not void as against public policy.** *Jones v. AIU Ins. Co.*, 51 P.3d 1044 (Colo. App. 2001).

**The key to the application of this section is the inability of the innocent injured party to recover for a loss caused by another's negligence, whether that person is known or unknown.** *Farmers Ins. Exch. v. McDermott*, 34 Colo. App. 305, 527 P.2d 918 (1974).

**Section requires coverage for hit-and-run drivers.** While the language of this section focuses on the problems of an uninsured motor vehicle, its applicability is not limited to those situations in which the identity of the negligent party is known. Furthermore, the declaration of public policy expresses the general assembly's prime concern as the need to compensate the innocent driver for injuries received at the hands of one from whom damages cannot be recovered. Thus, this section does require coverage

for hit-and-run drivers. *Farmers Ins. Exch. v. McDermott*, 34 Colo. App. 305, 527 P.2d 918 (1974).

**Section requires coverage for accidents involving drivers having governmental immunity.** The phrase "legally entitled to recover damages", as used in this section, means that the insured must be able to establish that the fault of the uninsured motorist gave rise to damages and the extent of those damages. But where recovery from the driver is precluded solely because of the Colorado Governmental Immunity Act, denial of coverage would contravene legislative intent. *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.3d 1265 (Colo. App. 2001).

**Provision requiring physical contact held invalid.** Uninsured motorist provision of an insurance policy, insofar as it required a physical contact between the insured vehicle and the "hit-and-run" vehicle, was invalid as an impermissible restriction upon the coverage which is required by this section. The physical contact rule is inconsistent with the public policy of the state. *Farmers Ins. Exch. v. McDermott*, 34 Colo. App. 305, 527 P.2d 918 (1974).

**Gunshot injuries sustained during a traffic altercation were "caused by accident" and, therefore, subject to uninsured motorist coverage.** *State Farm Mut. Auto. Ins. Co. v. McMillan*, 925 P.2d 785 (Colo. 1996).

**Phrase "caused by accident" was ambiguous, and must be construed against the drafter of the insurance policy.** *State Farm Mut. Auto. Ins. Co. v. McMillan*, 925 P.2d 785 (Colo. 1996).

**"Use of an automobile" held not to include the defendant's action of blocking the path of the plaintiffs' vehicle with his own vehicle, exiting his vehicle, and then assaulting the plaintiffs with a golf club.** *Roque v. Allstate Ins. Co.*, 2012 COA 10, \_\_ P.3d \_\_.

**The insurance commissioner cannot by any of his actions vary the requirements of this section or change the public policy of this state determined by the general assembly as specified in former § 10-4-320.** *Nationwide Mut. Ins. Co. v. Hillyer*, 32 Colo. App. 163, 509 P.2d 810 (1973).

**Provision in insurance policy that allows the insurer to set off benefits received from workmen's compensation is, in effect, the reduction of uninsured motorist coverage in contravention of the established minimums, and this result is contrary to public policy.** *Nationwide Mut. Ins. Co. v. Hillyer*, 32 Colo. App. 163, 509 P.2d 810 (1973).

**Double recovery is not contemplated by the uninsured motorist statute.** *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974).

**"Other insurance" clause not offensive to public policy.** A person purchasing a motor

vehicle insurance policy has three options: That of rejecting uninsured motorist coverage; that of purchasing it in a minimum amount; or that of purchasing it in an amount greater than that specified by statute. In view of these options, there is nothing offensive to public policy in an "other insurance" clause which denied recovery of additional sums over and above that provided by the primary insurance carrier. *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974).

**Validity of arbitration clauses.** While courts in other jurisdictions have held that insurance policy clauses requiring arbitration of coverage under the uninsured motorist provisions cannot be reconciled with statute requiring protection against uninsured motorists, the Colorado appellate court has declined to adopt this view in light of the discernible policy supporting arbitration in this state. *Wales v. State Farm Mut. Auto. Ins. Co.*, 38 Colo. App. 360, 559 P.2d 255 (1976).

An arbitration clause that compels an insured to arbitrate a claim for UM benefits does not directly limit the insured's right to such benefits and is thus enforceable. *Peterman v. State Farm Mut. Auto. Ins. Co.*, 948 P.2d 63 (Colo. App. 1997), rev'd on other grounds, 961 P.2d 487 (Colo. 1998).

**Requirement for enforceability of arbitration clause.** C.R.C.P. 109, which requires that the parties execute a written agreement to arbitrate a dispute, that an arbitrator be named, and that the award may be filed as a basis of a judgment, must be satisfied as a requisite to enforceability of an arbitration clause in an insurance policy. *Wales v. State Farm Mut. Auto. Ins. Co.*, 38 Colo. App. 360, 559 P.2d 255 (1976).

**Personal injury protection and uninsured motorist coverage compared.** *Newton v. Nationwide Mut. Fire Ins. Co.*, 197 Colo. 462, 594 P.2d 1042 (1979).

**For decisions under former § 10-4-320** relating to legislative declaration as to uninsured motorist coverage, see *Nationwide Mut. Ins. Co. v. Hillyer*, 32 Colo. App. 163, 509 P.2d 810 (1973); *Alliance Mut. Cas. Co. v. Duerson*, 184 Colo. 117, 518 P.2d 1177 (1974); *Farmers Ins. Exch. v. McDermott*, 34 Colo. App. 305, 527 P.2d 918 (1974); *Granite State Ins. Co. v. Dundas*, 34 Colo. App. 382, 528 P.2d 961 (1974); *Wales v. State Farm Mut. Auto. Ins. Co.*, 38 Colo. App. 360, 559 P.2d 255 (1976); *Newton v. Nationwide Mut. Fire Ins. Co.*, 197 Colo. 462, 594 P.2d 1042 (1979).

**This section regulates the availability of insurance protection against uninsured motorists** and is designed to protect persons from the often devastating consequences of motor vehicle accidents. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989); *Thurman v. State Farm Mut. Auto. Ins. Co.*, 942 P.2d 1327 (Colo. App. 1997); *DeHerrera v. Sentry Ins. Co.*,

992 P.2d 629 (Colo. App. 1999), rev'd on other grounds, 30 P.3d 167 (Colo. 2001).

**This section requires insurers to offer their customers the opportunity to protect themselves from loss** caused by negligent conduct of drivers who have not obtained insurance to pay for such loss. The coverage enables the insured to gain compensation for loss due to the negligent conduct of non-insured motorists in the same manner as the insured would be compensated for loss due to the negligent conduct of insured motorists. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989); *Thurman v. State Farm Mut. Auto. Ins. Co.*, 942 P.2d 1327 (Colo. App. 1997).

**Purpose** of section is to provide insurance protection against injuries and damages caused by financially irresponsible uninsured motorists. *Shelter Mut. Ins. Co. v. Thompson*, 852 P.2d 459 (Colo. 1993) (decided prior to 1992 amendment); *Freeman v. State Farm Mut. Auto. Ins. Co.*, 946 P.2d 584 (Colo. App. 1997).

**The purpose of underinsured motorist coverage is to enable an insured to receive coverage to the extent necessary to compensate fully** for a loss caused by the conduct of a financially irresponsible driver. *Freeman v. State Farm Mut. Auto. Ins. Co.*, 946 P.2d 584 (Colo. App. 1997).

**Intent** of this section is to enable an injured insured to recover for loss caused by an underinsured motorist to the same extent that the injured insured would recover for damages caused by an uninsured motorist, and the underlying legislative policy of underinsured motorist coverage does not differ from that of uninsured motorist coverage. *Thompson v. Shelter Mut. Ins. Co.*, 835 P.2d 518 (Colo. App. 1991) (decided prior to 1992 amendment).

**This section is to assure that a person injured by an uninsured motorist is compensated** to the same extent as one injured by a motorist who is insured in compliance with the law. Section 10-4-711 requires coverage only for accidents that occur within the United States, its territories or possessions, Canada, and Puerto Rico. *Gonzales v. Allstate Ins. Co.*, 51 P.3d 1103 (Colo. App. 2002).

**This section contains no provision expressly authorizing insurers to limit their liability for uninsured motorist benefits.** *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (1989).

**Liability of insurer for underinsured motorist coverage** is not contingent upon insured's full recovery under tortfeasor's policy. *State Farm Mut. Auto. Ins. Co. v. Bencomo*, 873 P.2d 47 (Colo. App. 1994).

Whether an insurer has made a sufficient offer requires an analysis of whether the notification was commercially reasonable, the limits of the coverage were specified, the insured was intelligibly advised as to the nature of the coverage



so as to allow an assessment of the offer, and whether the insured was advised that the optional coverage was available for a modest increase in the premium. *Parfrey v. Allstate Ins. Co.*, 815 P.2d 959 (Colo. App. 1991), *aff'd* in part and *rev'd* in part, 830 P.2d 905 (Colo. 1992).

**An insurer is liable for prejudgment interest pursuant to § 5-12-102 for underinsured motorist coverage from the date of the insurer's wrongful refusal or failure to pay**, notwithstanding a policy provision that provided that liability and the amount of damages were to be determined by agreement of the parties or by arbitration. *Bowen v. Farmers Ins. Exch.*, 929 P.2d 14 (Colo. App. 1996).

**Insurer is liable for prejudgment interest in excess of an uninsured motorist policy limit pursuant to § 5-12-102** where the interest is a damage item that did not arise out of the accident but arose instead out of the insurer's breach of the insurance contract. *Peterman v. State Farm Mut. Auto. Ins. Co.*, 8 P.3d 549 (Colo. App. 2000).

**Insurer is not liable for prejudgment interest in excess of the underinsured motorist policy limits.** If the insurer has paid the maximum allowed under the policy, prejudgment interest may not be added. *Vaccaro v. Am. Family Ins. Group*, 2012 COA 9M, 275 P.3d 450.

**The purpose of subsection (2) is to provide the prospective policyholder an opportunity to make an informed decision regarding the appropriate level of uninsured/underinsured motorist (UM/UIM) coverage.** *Richardson v. Farmers Ins. Exch.*, 101 P.3d 1138 (Colo. App. 2004).

In furtherance of that purpose, the subsection imposes a duty on the insurance company to offer the prospective policyholder the opportunity to purchase UM/UIM coverage in an amount equal to the policyholder's bodily injury liability limits up to \$100,000 per person and \$300,000 per accident. *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167 (Colo. 2001); *Richardson v. Farmers Ins. Exch.*, 101 P.3d 1138 (Colo. App. 2004).

**Subsection (2) creates a one-time duty upon an insurer to notify an insured of the nature and purpose of uninsured and underinsured motorist coverage and to give such insured the opportunity to purchase such coverage** in accordance with the insurer's rating plan. *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905 (Colo. 1992).

**But, the insurer's duty of notification and offer must be performed in such a manner as is reasonably calculated to permit the insured to make an informed choice** as to whether to purchase uninsured and underinsured motorist coverage in an amount which exceeds the minimum statutory liability limits. *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905 (Colo. 1992); *Richard-*

*son v. Farmers Ins. Exch.*, 101 P.3d 1138 (Colo. App. 2004).

**Subsection (2) does not make the obligation to inform contingent upon the insured's purchase of bodily injury liability coverage in excess of the statutory minimum.** *Loar v. State Farm Mut. Auto. Ins. Co.*, 143 P.3d 1083 (Colo. App. 2006) (decided prior to 2007 amendment).

**Absent any special relationship of "entitlement" in which an insurer assumes a greater duty of care for an insured**, the insurer has no obligation to offer or recommend UM/UIM coverage in an amount greater than the statutorily set limits. *Kaercher v. Sater*, 155 P.3d 437 (Colo. App. 2006).

**The determination as to whether an insurer adequately performed its duty of notification and offer will be based on a consideration of the totality of the circumstances.** Factors to consider include the clarity of the explanation, whether the explanation was oral or written, the specificity of the options explained to the insured, the price of the different levels of coverage, and any other circumstances regarding the adequacy and clarity of the notification and offer. *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905 (Colo. 1992).

Where the insurer does not comply with the statutory requirement to offer the prospective policyholder the opportunity to purchase UM/UIM coverage in an amount equal to the policy's bodily injury liability limits for a class of insureds coextensive with the class of insureds covered under the liability provisions, a step-down endorsement limiting UM/UIM coverage for permissive users of the covered individual's vehicle is unenforceable. *Richardson v. Farmers Ins. Exch.*, 101 P.3d 1138 (Colo. App. 2004).

**Under subsection (2), insureds are not entitled to obtain enhanced UM/UIM coverage without raising their own bodily injury liability limits.** *Loar v. State Farm Mut. Auto. Ins. Co.*, 143 P.3d 1083 (Colo. App. 2006) (decided prior to 2007 amendment).

**Former § 10-4-712 (3)(c)(II)(H) contained an exception to this section's rule that an insurer does not have a duty to offer higher UM/UIM coverage when the insured makes a change to a policy.** The exception required the insurer to offer new UM/UIM coverage pursuant to subsection (2) if there is an increase in bodily injury liability limits and the limits of the uninsured motorist coverage would be less than such limits. *Pacheco v. Shelter Mut. Ins. Co.*, 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Former § 10-4-712 (3)(c)(II)(H) required insurer to offer higher UM/UIM coverage when insureds increased their bodily injury liability limits, regardless of whether the policy was a new policy, a replacement policy, or a renewal policy. *Pacheco v. Shelter Mut. Ins. Co.*, 583

F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

Factors to consider in determining, under a totality of the circumstances approach, whether the insurer satisfied its duty to notify and offer higher UM/UM coverage include the clarity with which the purpose of UM/UM coverage was explained to the insured; whether the explanation was made orally or in writing; the specificity of the options made known to the insured; the price at which the different levels of UM/UM coverage could be purchased; and any other circumstances bearing on the adequacy and clarity of the notification and offer. Pacheco v. Shelter Mut. Ins. Co., 583 F.3d 735 (10th Cir. 2009) (decided under law in effect in 2000).

**“Stacking” provisions harmonized.** Subsection (2) allows an insurer to prohibit stacking of UM/UM limits only as to policies issued to the insured, not as to policies covering the insured but not issued to the insured or a resident relative. Therefore, under subsection (4)(a), the policy limits of two policies could be combined to determine whether the tortfeasor was underinsured. Progressive Spec. Ins. Co. v. Hartford Und. Ins. Co., 148 P.3d 470 (Colo. App. 2006).

**Exclusion of a vehicle insured under the liability terms of a policy from uninsured motor vehicle coverage** does not violate the legislative purposes and the public policy underlying this section. The insured vehicle exclusion prevents the transformation of uninsured coverage into liability coverage when a claim is made for uninsured motorist benefits to compensate injuries that result from the operation of a vehicle insured for liability. Terranova v. State Farm, 800 P.2d 58 (Colo. 1990).

**Exclusions for coverage based on vehicles being owned by the policyholder but insured by a different automobile insurance policy are void and against the public policy of this section.** Jaimes v. State Farm Mut. Auto. Ins. Co., 53 P.3d 743 (Colo. App. 2002).

**Owned-but-not-insured exclusion is misleading.** In UM/UM policy, an exclusion for owned-but-not-insured vehicles is void. Therefore, an insurer who includes such an exclusion in its policies fails to satisfy its disclosure obligations. Briggs v. Am. Nat’l Prop. & Cas. Co., 209 P.3d 1181 (Colo. App. 2009).

**A clause limiting coverage to incidents corroborated by someone other than the named insured** are void against the public policy of this section. This section does not include a corroboration clause or permit a policy to have such a provision. Therefore, the use of such clauses violates the public policy. Mavashev v. Windsor Ins. Co., 72 P.3d 469 (Colo. App. 2003).

**Uninsured motorist benefits unavailable to insured** when policy definition excludes from uninsured motorist protection an automobile insured under the policy’s liability coverage and policy also denies liability coverage under a

household exclusion. Allstate v. Feghali, 814 P.2d 863 (Colo. 1991).

**Insurance coverage under this section is not based on the number of uninsured or underinsured tortfeasors causing an accident,** nor is it significant that one driver was uninsured and the other was underinsured. Farmers Ins. Exch. v. Star, 952 P.2d 809 (Colo. App. 1997); Am. Family Mut. Ins. Co. v. Murakami, 169 P.3d 192 (Colo. App. 2007).

**Holders of certificates of self-insurance are not required by subsection (1) to carry uninsured motorist coverage.** White by Scott v. Reg’l Transp. Dist., 735 P.2d 218 (Colo. App. 1987).

**A car rental agreement constitutes an insurance policy for purposes of this section,** where the rental company offers to sell the lessee various types of insurance coverage for specified prices. The lessee is the named insured and the rental company is required to provide the lessee the option of purchasing uninsured motorist coverage. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

**The fact that the car rental company is self-insuring is not controlling.** The car rental company still constitutes an insurer and must offer the lessee, as the named insured, the option of rejecting uninsured motorist protection. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

**The definition of “policy” in § 10-4-601 (2) does not apply to this section.** Application of the definition to this section would conflict with the legislative intent that all purchasers of automobile liability insurance policies must be afforded the opportunity to purchase uninsured motorist coverage. Passamano v. Travelers Indem. Co., 882 P.2d 1312 (Colo. 1994).

**Subrogation and release-trust agreements allowed.** With regard to an award under uninsured motorist coverage, an insurer can be subrogated to the rights which the insured has against those persons responsible for his injuries. Likewise, a trust release agreement entered into between the insured and the insurer is not void as against public policy. Granite State Ins. Co. v. Dundas, 34 Colo. App. 382, 528 P.2d 961 (1974); Kral v. Am. Hardware Mut. Ins. Co., 754 P.2d 411 (Colo. App. 1987), rev’d on other grounds, 784 P.2d 759 (Colo. 1989).

**Subsection (1) of this section and § 42-7-103 (2), when read together, clearly establish the intent of the general assembly** to provide a mechanism by means of which an insured might purchase insurance coverage for protection against loss caused by the conduct of a negligent and financially irresponsible motorist. This legislative intent is further reflected in subsections (4) and (5) of this section which provisions were added to the uninsured motorist coverage statute in 1983. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989); Briggs v. Am. Fam-



ily Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).

**Subsection (4) permits an injured insured to recover for loss caused by an underinsured motorist to the same extent the insured would recover if the underinsured motorist had no insurance.** Subsection (5) measures the maximum limits of the insurer's liability by the extent of the insured's loss. When considered together, subsections (1), (4), and (5) of this section and § 42-7-103 (3) reflect a clear legislative purpose to place an injured party having uninsured motorist coverage in the same position as if the uninsured motorist had been insured. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989); *Briggs v. Am. Family Mut. Ins. Co.*, 833 P.2d 859 (Colo. App. 1992).

**Subsection (5) allows an insurer to aggregate all amounts received by the insured from all parties liable for his or her injuries, and such a policy would not violate public policy by impermissibly diluting or limiting statutorily mandated coverage.** *Carlisle v. Farmers Ins. Exch.*, 946 P.2d 555 (Colo. App. 1997); *Am. Family Mut. Ins. Co. v. Murakami*, 169 P.3d 192 (Colo. App. 2007).

**Primary insurer is first to receive the offset under subsection (5).** As between a primary insurer and an excess insurer, the primary insurer faced the greater risk. Had the tortfeasor been uninsured, the primary insurer would have been required to pay the claim up to the full amount of its policy limits before the excess insurer was required to pay anything. Therefore, the primary insurer should be the first to receive the benefit of the offset. *Progressive Spec. Ins. Co. v. Hartford Und. Ins. Co.*, 148 P.3d 470 (Colo. App. 2006).

**The purpose of underinsurance is to place the injured party in the same position as if the underinsured had liability limits in amounts equal to the insured's coverage.** This will not necessarily result in the injured being compensated to the full extent of such injured person's injuries. *Leetz v. Amica Mut. Ins. Co.*, 839 P.2d 511 (Colo. App. 1992); *Prudential Prop. and Cas. Ins. Co. v. LaRose*, 919 P.2d 915 (Colo. App. 1996); *McCord v. Affinity Ins. Group, Inc.*, 13 P.3d 1224 (Colo. App. 2000).

**The purpose of the uninsured/underinsured motorist coverage available pursuant to this section is to compensate fully an innocent insured for loss, subject to policy limits, caused by financially irresponsible motorists.** *Farmers Ins. Exch. v. Walther*, 902 P.2d 930 (Colo. App. 1995).

**This section does not specify how legal entitlement to uninsured motorist benefits is to be determined in regard to the liability of an insurer.** It is the insurance policy that specifies the process for determining whether the insured is "legally entitled" to collect damages so as to bind the insurer. *Peterman v. State Farm Mut.*

*Auto. Ins. Co.*, 948 P.2d 63 (Colo. App. 1997), *rev'd on other grounds*, 961 P.2d 487 (Colo. 1998).

**This section requires insurers to offer uninsured motorist coverage** to a class of individuals coextensive with the class covered by the liability provision of the respective policy. *Aetna Cas. & Sur. Co. v. McMichael*, 906 P.2d 92 (Colo. 1995); *Richardson v. Farmers Ins. Exch.*, 101 P.3d 1138 (Colo. App. 2004); *Farmers Ins. Exch. v. Anderson*, 260 P.3d 68 (Colo. App. 2010).

**Section does not impose a right to be offered UM/UIM insurance on a per vehicle basis.** Neither the statute nor case law interpreting the statute expressly or impliedly requires that insurance be offered for each vehicle owned by the policyholder. *Briggs v. Am. Nat'l Prop. & Cas. Co.*, 209 P.3d 1181 (Colo. App. 2009).

**The enforcement of a subrogation clause and release-trust agreement** placing the insured in the position of having no greater protection against her loss than if uninsured motorist coverage had not been purchased contravened the strong policy adopted by the general assembly to enable an insured who purchases uninsured motorist protection to receive the benefits of that coverage to the extent necessary for full compensation for loss caused by the negligent conduct of a financially irresponsible motorist. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989).

**To the extent any reduction of benefits payable to the insured under the uninsured motorist provision of the contract of insurance** because of the terms of the subrogation clause and release-trust agreement would result in the insured's inability to obtain full compensation for the loss she sustained, the agreements would directly violate that legislative policy and would therefore be unenforceable. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989).

**The general assembly's decision to allow insureds to decline to purchase uninsured motorist protection** does not mean the legislature has exempted subrogation of uninsured motorist benefits from its general policy of requiring full compensation to insureds for loss sustained in automobile accidents. *Kral v. Am. Hardware Mut. Ins. Co.*, 784 P.2d 759 (Colo. 1989).

**Arbitration provision in no-fault policy with uninsured motorist coverage requiring each party to pay its own fees and expenses of arbitration held void as against public policy and unenforceable.** *Garceau v. Iowa Kemper Ins. Co.*, 859 P.2d 243 (Colo. App. 1993).

**Where clause of an uninsured motorist policy permits either party to demand trial on merits after the completion of arbitration if amount awarded exceeds specified amount, clause violates public policy by diluting uninsured motorist coverage and is unenforceable.**

Huizar v. Allstate Ins. Co., 952 P.2d 342 (Colo. 1998).

**“Actual trial” clause in insurance contract violates public policy** by diluting uninsured motorist coverage and is unenforceable. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

Denial of coverage in cases where the uninsured motorist's liability is determined in a default judgment needlessly requires the insured to re-litigate issues already decided. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

**The general assembly has established that a person who purchases uninsured motorist coverage and sustains loss** caused by the negligent conduct of an uninsured motorist is entitled to the benefits of such coverage to the extent necessary to fully compensate the insured for the loss, subject to the limits of the insurance contract. However, the general assembly did not intend to grant windfall profits to insureds by authorizing them to obtain double recovery for the same loss. To the extent payment of all or part of the authorized uninsured motorist benefit to the insured would, when added to the settlement proceeds she received, result in her receiving sums in excess of her total loss, the insurer should be entitled to enforce the terms of a release-trust agreement. Kral v. Am. Hardware Mut. Ins. Co., 784 P.2d 759 (Colo. 1989).

**Allowing an insurance company to reduce the amount to be paid in UM/UIM coverage by the amount of social security disability benefits received by the insured contravenes public policy** which allows insureds full recovery within policy limits. Barnett v. Am. Family Mut. Ins. Co., 843 P.2d 1302 (Colo. 1993).

**While insureds should not be deprived of benefits for which they pay premiums, they should not be given a double recovery.** Where plaintiff is fully compensated for medical expenses, it is not unlawful for insurer to deduct from UM/UIM benefits the amount of medical payments insurer paid. Levy v. Am. Family Mut. Ins. Co., \_\_\_ P.3d \_\_\_ (Colo. App. 2011).

**This section has been construed to allow certain offsets of amounts that the insured receives from the tortfeasor's carrier and the uninsured/underinsured motorist benefits the insured receives under a policy other than his or her own when injured by an uninsured motorist,** except that insurer may not offset amounts an insured receives under “separate and distinct” insurance or other agreements. Farmers Ins. Exch. v. Walther, 902 P.2d 930 (Colo. App. 1995).

**Under this section, an injured person covered by an underinsured motorist policy who settles in good faith with a tortfeasor or liability carrier for less than the tortfeasor's policy limits, and who is eligible for underinsured motorist benefits, is entitled to compensation in an**

amount not exceeding the difference between the amount paid to the insured by or on behalf of the tortfeasor and the limits of underinsured motorist coverage. State Farm Mut. Auto. Ins. Co. v. Tye, 931 P.2d 540 (Colo. App. 1996).

**Phrase “legally liable for the bodily injury” refers only to the tortfeasor who caused such bodily injury or death.** Carrier liable for underinsured motorist benefits that sought to offset amount owed to insured with amount insured received as heir to the decedent, who was not the tortfeasor, was not eligible for such offset, as liability for amount insured received as heir to the decedent was not “imposed by law”; rather, liability was imposed pursuant to a contract of insurances between decedent and her carrier that insured against losses resulting from bodily injury or death caused by someone legally liable for such bodily injury or death. McCord v. Affinity Ins. Group, Inc., 13 P.3d 1224 (Colo. App. 2000).

**This section does not prohibit an auto policy provision that excludes coverage for personal injury to an insured's relative who occupied a vehicle owned by the insured but which was not covered by the insured's auto policy.** Williams-Diehl v. State Farm, 793 P.2d 587 (Colo. App. 1989).

Nor does this section prohibit an exclusion for a vehicle that is not insured under the policy. An exclusion that does not cover any vehicle that is provided for the insured's use does not violate this section. Cruz v. Farmers Ins. Exch., 12 P.3d 307 (Colo. App. 2000).

**There is a private cause of action based on violations of this section.** Preventing an insured's right of relief for failure to provide the coverage would circumvent the statutory duty imposed upon insurer to include the coverage in every policy, unless the insured expressly rejects it. Parfrey v. Allstate Ins. Co., 815 P.2d 959 (Colo. App. 1991), aff'd in part and rev'd in part, 830 P.2d 905 (Colo. 1992).

**Tort claim against the uninsured motorist is distinct from the contract claim against the insurer.** In the former case, where the uninsured motorist's liability is determined by default, the insurer may not insist upon a jury trial. In the latter case, however, the amount of damages payable under the contract is an issue, and the insurer may demand a jury trial. State Farm Mut. Auto. Ins. Co. v. Brekke, 105 P.3d 177 (Colo. 2004).

**The term “replacement policy” used in subsection (3) refers to a policy issued to replace a prior policy which has been lost or destroyed or to a new policy which incorporates provisions different from those in a prior policy.** Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992).

**Consent to sue clauses are void as against public policy.** Briggs v. Am. Family Mut. Ins. Co., 833 P.2d 859 (Colo. App. 1992).



**Consent to sue clause in uninsured motorist provisions of an insurance contract was void as against the statutory mandate of this state regarding uninsured motorist coverage.** *Peterman v. State Farm Mut. Auto. Ins. Co.*, 961 P.2d 487 (Colo. 1998).

**Consent to settle clause does not violate public policy.** Such clause, designed to protect the legitimate right of an insurer to pursue its subrogation rights, serves a valid purpose and does not diminish the protection of this statute. *Estate of Harry v. Hawkeye-Security Ins. Co.*, 972 P.2d 279 (Colo. App. 1998).

**Possibility of fraud or collusion is not justification for upholding consent to sue clauses** and the multiplicity of lawsuits that result therefrom. Insurer can intervene in tort action between the insured and the uninsured for protection from such multiplicity of suits. *Briggs v. Am. Family Mut. Ins. Co.*, 833 P.2d 859 (Colo. App. 1992).

**An insurer will be bound by the resolution of issues in a tort action between the insured and an uninsured motorist** as long as the insurer has notice and an opportunity to intervene, even if the insurer fails to seek intervention. *Briggs v. Am. Family Mut. Ins. Co.*, 833 P.2d 859 (Colo. App. 1992).

**"Consent to sue" clause in uninsured policy found void** as against public policy. *Briggs v. Am. Family Mut. Ins. Co.*, 833 P.2d 859 (Colo. App. 1992).

**Anti-stacking provisions contained in underinsured motorist insurance policies do not violate the public policy underlying this section.** *Shelter Mut. Ins. Co. v. Thompson*, 852 P.2d 459 (Colo. 1993).

**Anti-stacking provisions contained in insurance policies are valid** and the claimant was not entitled to stack the underinsured motorist benefits of his three separate policies. *Colo. Farm Bureau Mut. Ins. v. Kehr*, 853 P.2d 1155 (Colo. 1993); *Farmers Ins. Exch. v. Stever*, 854 P.2d 1230 (Colo. 1993).

**Anti-stacking provisions do not include** exclusionary provisions and "other insurance" provisions in the uninsured/underinsured policy concerning limitations on coverage when other automobile liability or uninsured/underinsured motorist coverage applies. *Farmers Ins. Exch. v. Walther*, 902 P.2d 930 (Colo. App. 1995).

**Anti-stacking provision in subsection (2) does not apply** where it was enacted after the policy was issued and after the accident on which the case was based occurred. *Farmers Ins. Exch. v. Walther*, 902 P.2d 930 (Colo. App. 1995); *Sellers v. Allstate Ins. Co.*, 82 F.3d 350 (10th Cir. 1996).

**Because the anti-stacking provisions of seven insurance policies applied only to policies issued by the same company,** and the petitioners' motorcycle policy was not issued by the same company as their car policies, the

existing record failed to support the district court's order in its entirety. The question of different insurance companies should have been addressed when noticed by the appellate court regardless of the petitioners' failure to raise it in the trial court or on appeal. *Roberts v. Am. Family Mut. Ins. Co.*, 144 P.3d 546 (Colo. 2006).

**Adding a new vehicle to a UM/UM policy does not constitute the issuance of a new policy** because a policy applies to the individuals insured and not the vehicles, therefore statutory amendments that became effective January 1, 2008, and applied only to policies issued or renewed on or after that date were not incorporated into an existing policy by the addition of coverage for a new vehicle. *Snell v. Progressive Preferred Ins. Co.*, 260 P.3d 37 (Colo. App. 2010).

**By its terms subsection (2) prohibits stacking a policy issued to a named insured upon another policy issued to the named insured or a resident relative of the named insured.** The statute prohibits stacking a policy issued to injured child's mother upon a policy issued to the child or a policy issued to injured child's father upon a policy issued to the child. Because injured child's mother and father are not resident relatives of one another, the statute does not prohibit the stacking of a policy issued to the mother upon a policy issued to the father. *Am. Std. Ins. Co. v. Savaiano*, 298 F. Supp.2d 1092 (D. Colo. 2003).

**For purposes of uninsured motorist provisions, plaintiff's automobile was uninsured while under control of uninsured thief and therefore the owner who was injured while trying to stop theft of car was entitled to recover damages under uninsured motorist coverage.** *State Farm Mut. Auto. Ins. Co. v. Nissen*, 835 P.2d 537 (Colo. App. 1992), *aff'd*, 851 P.2d 165 (Colo. 1993).

**Policy requirement that plaintiff "occupy" vehicle at time of accident against public policy.** Since plaintiff was using vehicle at time of accident even though not occupying it, he is entitled to recover. *McMichael v. Aetna Ins. Co.*, 878 P.2d 61 (Colo. App. 1994).

**Restrictions on kind of vehicle also against public policy.** This act requires that UM/UM insurance apply to an insured person when injured by a financially irresponsible motorist. The act places no geographical limits on coverage, nor does it purport to tie protection against uninsured motorists to occupancy in any kind of vehicle. *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167 (Colo. 2001).

**UM/UM coverage follows the insured, not the vehicle.** *Wagner v. Travelers Prop. Cas. Co. of Am.*, 209 P.3d 1119 (Colo. App. 2008); *Farmers Ins. Exch. v. Anderson*, 260 P.3d 68 (Colo. App. 2010).

While section does not require insurer to advise insured of the implications of court decisions affecting UM/UM coverage under automobile insurance policies, summary judgment in favor of insurer was not appropriate because there is a genuine question of material fact as to whether a reasonable consumer could believe insurer sold UM/UM coverage on a vehicle basis rather than a policy basis, thereby requiring the consumer to purchase UM/UM coverage on all vehicles in order to protect the named insured and residential family members. *Wagner v. Travelers Prop. Cas. Co. of Am.*, 209 P.3d 1119 (Colo. App. 2008).

**Insurer's policy was not misleading because it:** (1) Does not list a separate UM/UM premium for each of plaintiff's insured vehicles; (2) includes a total premium section specifically for UM/UM insurance that provides coverage for class one insureds and class two insureds; (3) contains a declaration page identified as "Additional Coverage"; and (4) shows a single charge for the entire policy regardless of the number of vehicles covered. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

**Insurer did not fraudulently conceal a material fact from insured that in equity and good conscience should have been disclosed.** Insurer is not required to provide information regarding the business practices of other insurance companies, specifically, that per-vehicle coverage was available from other insurance companies, and plaintiff and other insureds received the benefit of UM/UM coverage under their policy for class two insureds in all vehicles listed on the policy. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

**Insurer did not commit negligent misrepresentation by omission.** Insurer was not obligated to provide information about other types of coverage; insurer's policy did not include an owned but not insured exclusion; and insurer's UM/UM coverage on additional vehicles provided an additional benefit by insuring class two insureds. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

**Insurer did not engage in bad faith where policy informed customers that purchase of UM/UM coverage provided UM/UM coverage for all class one and class two insureds in all vehicles.** An offer that includes accurate information about additional benefits provided is sufficient, and those benefits do not need to be specifically identified as additional benefits. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

Insurer's practices comply with Colorado law, and, therefore, its practices were not unreasonable. *Mullen v. Allstate Ins. Co.*, 232 P.3d 168 (Colo. App. 2009).

**In determining whether the tortfeasor's vehicle was underinsured,** the trial court correctly used the per accident bodily injury liability

limit in the tortfeasor's policy for comparison where the plaintiff's insurance policy specified only a single limit. *Leetz v. Amica Mut. Ins. Co.*, 839 P.2d 511 (Colo. App. 1992).

**A tortfeasor's motor vehicle is underinsured under subsection (4)(a) whenever the limits of insurance liability on that motor vehicle are less than the sum of the underinsured motorist coverage declared in the injured party's policy and the underinsured motorist coverage declared in all other applicable policies.** The word "limits" contained in subsection (4)(a) refers to the full amount of underinsured motorist coverage allowed by the injured party's entire policy, including those terms and conditions that permit the "stacking" of the underinsured portions of a policy issued to the injured party and the underinsured portions of other policies covering the injured party that were not issued to either the injured party or one of his or her resident relatives. Therefore, the initial determination of whether a tortfeasor's motor vehicle is underinsured under subsection (4)(a) is determined by comparing the liability limits of the tortfeasor's vehicle with the sum of the underinsured portions of the injured party's policy and the underinsured portions of any other applicable policies. *State Farm Mut. Auto. Ins. Co. v. Progressive Mut. Ins. Co.*, 148 P.3d 117 (Colo. 2006).

**The legislative directive in this section to find coverage for "innocent insureds" should not be construed to provide coverage for non-insureds** even when a non-insured person has relied on such coverage. *General Ins. Co. of Am. v. Smith*, 874 P.2d 412 (Colo. App. 1993).

**Public policy not violated** for failure to carry uninsured motorist coverage for a particularly excluded driver or his or her innocent passenger. *Lopez v. Dairyland Ins. Co.*, 890 P.2d 192 (Colo. App. 1994).

**A policy for UM/UM coverage, negotiated at specific request of the insured,** that is more narrow than general liability coverage does not impermissibly dilute, condition, or limit the coverage that must be offered pursuant to this section. *Bernal v. Lumbermens Mut. Cas. Co.*, 97 P.3d 197 (Colo. App. 2003).

The provisions of this section do not include an express restriction on the policyholder's freedom to modify the scope of UM/UM coverage. *Bernal v. Lumbermens Mut. Cas. Co.*, 97 P.3d 197 (Colo. App. 2003).

**Public policy prohibits restricting UM/UM coverage according to the type of vehicle.** Where an employee operated a company truck within the course and scope of the employee's employment and for which the employer elected UM/UM coverage for employee's occupying private passenger autos only, the court found restricted UM/UM coverage an impermissible restriction on coverage. *Bernal v.*



Lumbermens Mut. Cas. Co., 97 P.3d 197 (Colo. App. 2003).

**The exclusion of uninsured motorist coverage for the wrongful death of a person who is not insured** under the terms of an insurance policy does not violate the public policy underlying uninsured motorist insurance as required by this section. *Farmers Ins. Exch. v. Chacon*, 939 P.2d 517 (Colo. App. 1997).

**Injuries sustained by police officer, who was attacked by dog that leapt from vehicle during stop and arrest of dog's owner who was uninsured, are not covered** under officer's uninsured motorist coverage. Transporting of dog, in and of itself, insufficient to support a finding that the injury arose from the use of the automobile. *Sanchez v. State Farm Mut. Auto. Ins. Co.*, 878 P.2d 31 (Colo. App. 1994).

**Summary judgment in favor of insured defendant was proper** where plaintiff was injured while a passenger in a vehicle driven by a person specifically excluded from insurance coverage under this section, and no obligation to provide uninsured motorist coverage exists. *Lopez v. Dairyland Ins. Co.*, 890 P.2d 192 (Colo. App. 1994).

**Summary judgment in favor of insurance company defendant was affirmed** where claimant was not a named insured under her parents' policy, her claim for emotional distress was based on a provision that applied only to persons with derivative claims, and she sought damages as a result of her own direct injuries and not those of her mother. *Wieprkowski v. State Farm Mut. Auto. Ins. Co.*, 976 P.2d 891 (Colo. App. 1999).

**An action against an insurance company is barred by res judicata** where claimant's initial claim for UIM benefits arising from an accident and the subsequent bad faith breach of contract claim against the company derive from the same "transaction". *Salazar v. State Farm Mut. Auto. Ins. Co.*, 148 P.3d 278 (Colo. App. 2006).

**Road repair truck used as barricade between worker and on-coming traffic was in "use" for purposes of recovery under underinsured motorist provisions of employer-truck owner's motor vehicle insurance policy.** Liability coverage was extended to anyone using the insured vehicle with the permission of the named insured and since plaintiff had permission to use the vehicle, he was entitled to UIM coverage to the extent that his injuries arose out of the "use" of the truck. *McMichael v. Aetna Ins. Co.*, 878 P.2d 61 (Colo. App. 1994).

**Death not causally related to use of uninsured motor vehicle**, therefore, uninsured motorist benefits not available under insurance policy. *State Farm Mut. Auto. Ins. Co. v. Fisher*, 618 F.3d 1103 (10th Cir. 2010).

**"[U]se" does not include a sexual assault inside a motor vehicle.** Using the interior of a

motor vehicle for sexual assault is not a reasonably foreseeable use of a motor vehicle; therefore, it does not have a sufficient causal nexus to injuries caused by such act. *State Farm Mut. Auto. Ins. Co. v. Kastner*, 77 P.3d 1256 (Colo. 2003).

**Insurer is entitled to aggregate damages** from multiple insureds under this section in calculating amount owed under a per-accident policy. *Union Ins. Co. v. Houtz*, 883 P.2d 1057 (Colo. 1994).

**Insurer's method of aggregating damages under the per-accident policy is not contrary to public policy.** *Union Ins. Co. v. Houtz*, 883 P.2d 1057 (Colo. 1994).

**Insurance policy coverage is not rendered illusory** simply by crediting an insurer with payments it has made, even if payments might reduce available UM/UIM coverage. *Levy v. Am. Family Mut. Ins. Co.*, \_\_\_ P.3d \_\_\_ (Colo. App. 2011).

**Insurance policy exclusion for motorcycles** does not violate public policy. *Allstate Indem. Co. v. Gonzales*, 902 P.2d 953 (Colo. App. 1995); *DeHerrera v. Sentry Ins. Co.*, 992 P.2d 629 (Colo. App. 1999), rev'd on other grounds, 30 P.3d 167 (Colo. 2001).

**Insured entitled to collect uninsured motorist benefits need not be person who suffered bodily injury or death.** Where plaintiff sought to collect uninsured motorist benefits as an heir to the decedent under a wrongful death claim arising from a death caused by an underinsured motorist, plaintiff was an "insured" for the purposes of subsection (4). *McCord v. Affinity Ins. Group, Inc.*, 13 P.3d 1224 (Colo. App. 2000).

**Where divorced parents' son was killed in an automobile accident, and each parent had a separate policy applicable to the accident that provided up to \$100,000 for damages arising from an accident involving an underinsured motor vehicle**, and the driver's policy had a liability limit of \$100,000, the driver was obligated to pay \$50,000 to each parent. As a result, for purposes of each parent's policy, \$50,000 was paid to a person "other than an insured injured person in the accident", namely, the other parent. Hence, the driver's vehicle was underinsured under the terms of each policy. Under the wrongful death statute, each parent could recover up to \$75,000 in uninsured motorist (UIM) benefits, and insurer was potentially liable under each parent's UIM policy for such amount. *Kline v. Am. States Ins. Co.*, 924 P.2d 1150 (Colo. App. 1996).

**An insurer may require judgment or settlement from the underinsured driver as a precondition** to a claim for UIM benefits without diluting, conditioning, or unduly limiting statutorily mandated UIM coverage. *Freeman v. State Farm Mut. Auto. Ins. Co.*, 946 P.2d 584 (Colo. App. 1997).

**It is not bad faith** for an insurer to not pay underinsured motorist coverage while related action is pending. The insurer's reliance on the plain meaning of the section and case law indicating that the amount of underinsured motorist coverage is unknown until recovery is made from the at-fault party was reasonable. *Pham v. State Farm Mut. Auto. Ins. Co.*, 70 P.3d 567 (Colo. App. 2003).

**Nothing in this section suggests the general assembly considered loss of consortium to be a separate bodily injury** that must be insured against in all insurance policies. Thus an insurer need not offer either liability or uninsured motorist insurance which separately covers a loss of consortium claim to be in compliance with this section. *Spaur v. Allstate Ins. Co.*, 942 P.2d 1261 (Colo. App. 1996).

Loss of consortium is not a "sickness" of the noninjured spouse any more than it is a "bodily

injury", it is merely an element of consequential damages arising out of the bodily injury to the spouse injured in the accident. *Spaur v. Allstate Ins. Co.*, 942 P.2d 1261 (Colo. App. 1996).

This section does not require full indemnification of losses suffered at the hands of the uninsured motorists under all circumstances without regard to policy limits. *Spaur v. Allstate Ins. Co.*, 942 P.2d 1261 (Colo. App. 1996).

**Independent contractor who elects not to obtain a policy of workers' compensation insurance covering himself** is precluded from recovering more than the \$15,000 statutory limit in damages from a UM/UIM insurer of the employer of a tortfeasor who is in the same employ as the independent contractor. *Cont'l Divide Ins. Co. v. Dickinson*, 179 P.3d 202 (Colo. App. 2007).

**10-4-610. Property damage protection against uninsured motorists.** (1) Every policy providing insurance for bodily injury caused by uninsured motorists that is delivered or issued for delivery in this state, which policy does not also provide insurance for collision damage, shall provide, at the request of the insured, coverage for the protection of persons insured thereunder who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance, or use of the uninsured motor vehicle. The coverage provided under this section shall cover the actual cash value of the vehicle or the cost of repair or replacement, whichever is less. Any coverage offered pursuant to this section on a vehicle may be subject to a deductible, at the option of the insurer, as with other property damage coverage. The coverage provided under this section shall not provide protection for:

- (a) Damage if there is not actual physical contact between the covered motor vehicle and another motor vehicle;
  - (b) Damages which are paid or payable under any other property insurance;
  - (c) Loss of use of a motor vehicle.
- (2) Repealed.

**Source: L. 88:** Entire section added, p. 409, § 1, effective January 1, 1989. **L. 89:** IP(1) and (1)(a) amended and (1)(c) and (2) added, p. 456, § 1, effective July 1. **L. 2006:** (2) repealed, p. 37, § 2, effective January 1, 2007.

**10-4-611. Elimination of discounts - damage by uninsured motorist.** No rating discounts applied to any policy of motor vehicle insurance issued in this state shall be reduced or eliminated as the result of a collision with an uninsured motor vehicle where the operator of the insured motor vehicle is not at fault.

**Source: L. 88:** Entire section added, p. 409, § 1, effective January 1, 1989.

**10-4-612. Study concerning implementation of proof of insurance. (Repealed)**

**Source: L. 92:** Entire section added, p. 1502, § 1, effective June 3. **L. 96:** Entire section repealed, p. 1229, § 50, effective August 7.

**10-4-613. Glass repair and replacement.** (1) No insurance company, domestic or foreign, or any agent or employee of such a company, shall require or permit that automobile glass repair or replacement work must be performed by a particular facility,



individual, or business establishment as a condition of payment of a claim. However, an insurance company may provide that payments for such work shall be limited to a fair competitive price. No insurance company that issues, delivers, or renews such a policy shall fail to pay for the repair or replacement of automobile glass by an insured's chosen vendor, nor shall any such insurance company engage in any act or practice of intimidation, coercion, or threat for or against any insured person or entity to use a particular vendor or location for such glass repair or replacement work. No insurance company shall agree to refund or rebate any applicable deductible or portion thereof as an incentive or inducement to any insured to use a particular vendor or location for glass repair or replacement work. The provisions of this section shall apply to all policies of insurance delivered, issued for delivery, or renewed in this state that cover motor vehicles.

(2) Notwithstanding the provisions of subsection (1) of this section, an insurance company may agree to pay the full cost of glass repair, notwithstanding any applicable deductible.

**Source: L. 92:** Entire section added, p. 1791, § 1, effective April 16.

**Editor's note:** This section was originally numbered as § 10-4-612 in House Bill 92-1275 but was renumbered on revision for ease of location.

**10-4-614. Inflatable restraint systems - replacement - verification of claims.** (1) If an insured receives payment for a policy claim for an inflatable restraint system that has inflated and deployed or been stolen, the insured shall replace such inflatable restraint system in the motor vehicle. Upon receiving such a policy claim, the insurer is authorized to inspect the vehicle for which the claim is being filed to verify that the inflatable restraint system did inflate and deploy or was stolen.

(2) For the purposes of this section, "inflatable restraint system" has the same meaning as is set forth in 49 CFR 507.208 S4.1.5.1 (b).

**Source: L. 97:** Entire section added, p. 796, § 1, effective August 6.

**10-4-615. Motorist insurance identification database program - reporting required - fine.** (1) (a) Each insurer that issues a policy pursuant to this part 6 shall provide to the department of revenue a record of each policy issued during the immediately preceding period. Such record shall comply with the requirements of subsections (2) and (3) of this section. This subsection (1) shall not be construed to prohibit more frequent reporting. Such policy information shall be provided to the department as follows:

(I) and (II) (Deleted by amendment, L. 2006, p. 1014, § 10, effective July 1, 2006.)

(III) Each insurer with any policies in place for the preceding six months shall provide such policy information every week for the immediately preceding week. Such information shall be reported no later than seven working days after the last date of the week reported on.

(b) Each insurer shall provide policy information on all existing policies issued by such insurer to the department at least every six months. The department and the working group created in section 42-7-604 (4) (b), C.R.S., shall determine if any new means of transmittal of such information may be utilized. Each insurer shall provide information regarding changes to existing policies to the department at the time of receipt of such information.

(2) The record described in subsection (1) of this section shall include:

(a) The name, date of birth, driver's license number, and address of each named insured owner or operator;

(b) The make, year, and vehicle identification number of each insured motor vehicle; and

(c) The policy number, effective date, and expiration date of each policy.

(3) Each insurer shall provide the required information in a form or manner acceptable to the designated agent.

(4) (a) The division of insurance shall assess a fine of not more than two hundred fifty dollars against an insurer for each day such insurer fails to report timely and accurate information in accordance with this section or with rules promulgated pursuant to section 42-7-604 (8), C.R.S. Any administrative costs incurred by the division of insurance shall be paid from the fines assessed pursuant to this paragraph (a).

(b) The commissioner shall excuse the fine if an insurer provides proof that its failure to comply was inadvertent, accidental, or the result of excusable neglect.

(5) (Deleted by amendment, L. 2006, p. 1014, § 10, effective July 1, 2006.)

(6) Repealed.

**Source:** L. 97: Entire section added, p. 1444, § 1, effective July 1. L. 2000: (4)(a) amended, p. 1635, § 8, effective June 1. L. 2001: (4)(a) and (6) amended, p. 522, § 3, effective May 22. L. 2003: (1), (4)(a), and (6) amended, p. 2645, § 1, effective July 1. L. 2004: IP(1)(a) and (1)(a)(III) amended, p. 796, § 8, effective May 21. L. 2006: (1) and (5) amended and (6) repealed, pp. 1014, 1010, §§ 10, 2, effective July 1.

**10-4-616. Disclosure of credit reports.** (1) (a) Insurers using new or updated credit information in insurance underwriting or rating shall notify applicants or policyholders that their credit information will be used for underwriting or rating.

(b) When an insurer uses a producer for such disclosure, the insurer shall provide the producer with the form of such notice and use a reasonable means to verify that such notice is given. The disclosure notice form shall be developed by the insurer.

(c) Upon request by an applicant or policyholder, an insurer or producer shall provide an explanation of the significant characteristics of the credit information that impact the policyholder's insurance score. This information may be included in the disclosure notice form.

(2) If the use of credit information results in an adverse action to a consumer, the insurer shall comply with the notice requirements of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq. Such notice shall include, but is not limited to:

(a) The identity, telephone number, and address of any consumer reporting agency from whom a credit report was obtained;

(b) Notice of the consumer's right to receive a free credit report from the consumer reporting agency for a period of sixty days if such report resulted in an adverse action; and

(c) Notice of the consumer's right to lodge a dispute with the consumer reporting agency and have any erroneous information corrected in accordance with the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq.

(3) For the purposes of this section, "adverse action" means a denial, cancellation, or nonrenewal of, an increase in any charge for, a placement into a higher tier, or a reduction or unfavorable change in the terms of coverage or amount of insurance in connection with underwriting of existing insurance or an application for insurance.

**Source:** L. 2003: Entire section added, p. 839, § 1, effective July 1, 2004.

**10-4-617. Insurers - biannual fee - auto theft prevention authority.** (1) Each insurer that issues a policy pursuant to this part 6 shall biannually pay a fee to the automobile theft prevention board, created pursuant to section 42-5-112, C.R.S., for the support of the automobile theft prevention authority. Upon receiving payment, the board shall transfer the amount received to the state treasurer for deposit in the Colorado auto theft prevention cash fund created in section 42-5-112 (4), C.R.S. The amount of the fee shall be equal to one dollar multiplied by the number of motor vehicles insured by the insurer as of July 1 of each year, divided by two. The insurer shall report the number of insured motor vehicles and pay the assessed biannual fee as follows:

(a) On or before August 15, 2008, and on or before August 15 each year thereafter, the insurer shall notify the automobile theft prevention board of the number of motor vehicles insured by that insurer as of July 1 of that year; and



(b) On or before January 1, 2009, and July 1, 2009, and on or before January 1 and July 1 each year thereafter, the insurer shall pay to the automobile theft prevention board the assessed biannual fee in the amount specified in this subsection (1).

(2) On or before February 1, 2009, and on or before February 1 each year thereafter, the automobile theft prevention board shall compare the list of insurers who paid the biannual fee with the list compiled by the division of insurance of all insurance companies licensed to insure motor vehicles in the state and shall notify the commissioner of the division of insurance of any insurer's failure to pay the fee prescribed in subsection (1) of this section. Upon receiving notice of an insurer's failure to pay the fee, the commissioner shall notify the insurer of the fee requirement. If the insurer fails to pay the fee to the automobile theft prevention board within fifteen days after receiving the notice, the commissioner may suspend the insurer's certificate of authority or impose a civil penalty of not more than one hundred twenty percent of the amount due, or both. The insurer shall pay the civil penalty to the commissioner. The commissioner shall transfer the amount received to the state treasurer who shall credit the amount to the Colorado auto theft prevention cash fund, created in section 42-5-112 (4), C.R.S.

(3) For the purposes of this section, "insurer" shall have the same meaning as provided in section 10-1-102 (13) that covers the operation of a motor vehicle.

(4) (a) Each insurer subject to the provisions of this section is hereby authorized to recoup the fee required in subsection (1) of this section from its policyholders.

(b) Each insurer subject to the provisions of this section shall not raise its premiums based on the fee in this section.

(5) As used in this section, "motor vehicle" does not include vehicles or vehicle combinations with a declared gross weight of more than twenty-six thousand pounds.

**Source:** L. 2003: Entire section added, p. 1330, § 2, effective April 22. L. 2008: Entire section amended, p. 2098, § 4, effective July 1. L. 2009: IP(1) and (2) amended, (SB 09-292), ch. 369, p. 1943, § 13, effective August 5.

**Editor's note:** This section was originally numbered as § 10-4-616 in House Bill 03-1251 but has been renumbered on revision for ease of location.

**Cross references:** For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 415, Session Laws of Colorado 2008.

#### **10-4-618. Unfair or discriminatory trade practices - legislative declaration. (Repealed)**

**Source:** L. 2003: Entire section added, p. 2554, § 2, effective July 1. L. 2007: Entire section repealed, p. 974, § 2, effective May 18.

**10-4-619. Coverage compulsory.** (1) Every owner of a motor vehicle who operates the motor vehicle on the public highways of this state or who knowingly permits the operation of the motor vehicle on the public highways of this state shall have in full force and effect a complying policy under the terms of this part 6 covering the said motor vehicle, and any owner who fails to do so shall be subject to the sanctions provided under sections 42-4-1409 and 42-7-301, C.R.S., of the "Motor Vehicle Financial Responsibility Act". This section shall not apply to persons who hold a current and valid certificate of self-insurance pursuant to section 10-4-624.

(2) An insurer shall not refuse to provide benefits to an insured on the basis that the insured is a volunteer for a fire department and is injured in a motor vehicle while responding to an emergency.

**Source:** L. 2003: Entire section amended, p. 2433, § 2, effective June 5; entire section added, p. 1560, § 3, effective July 1. L. 2004: Entire section amended, p. 895, § 3, effective May 21.

**Editor's note:** This section was originally numbered as § 10-4-616 in House Bill 03-1188 but has been renumbered on revision for ease of location.

## ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-705 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

**Act generally covers claims arising from automobile accidents between private person and public entity.** Reg'l Transp. Dist. v. Voss, 890 P.2d 663 (Colo. 1995).

**Vehicles operating out of the normal traffic flow** on highways, roads, or other places, are exempt, as are their owners, from the compulsion of the statute. Smith v. Simpson, 648 P.2d 677 (Colo. App. 1982).

**Coverage is compulsory** even though the owner does not have knowledge of or give permission to each individual who drives the car. Bukulmez v. Hertz Corp., 710 P.2d 1117 (Colo. App. 1985); aff'd in part and rev'd in part on other grounds sub nom. in Blue Cross of W. New York v. Bukulmez, 736 P.2d 834 (Colo. 1987).

**The provisions of this section and § 10-4-706 do not mandate a minimum coverage for every policy.** Rather, the purpose of these statutes is to impose upon motor vehicle owners a mandated level of insurance coverage for their vehicles. Since the insurer limited its total liability under all three identical vehicle insurance policies to the requisite statutory minimum and since each policy therefore complied with the insured's statutory obligation, there was no conflict with this section and § 10-4-107. Am. Standard Ins. Co. v. Ekeroth, 791 P.2d 1220 (Colo. App. 1990), cert. denied, 797 P.2d 1299 (Colo. 1990).

In-state insurers are not excluded from having to provide the minimum coverages required of out-of-state insurers. Ortiz v. Hawkeye-Security Ins. Co., 971 P.2d 233 (Colo. App. 1998).

**Court declined to read in a primacy requirement to the compulsory coverage mandated by this section.** Neither case law nor current statutory law requires compulsory coverage under this section to be treated as primary. To the contrary, § 10-4-623 states that an owner's compulsory coverage "may be subject to conditions and exclusions that are not inconsistent with the requirements" of the relevant statutes. Further, former § 10-4-707 (4) shows that the general assembly knows how to identify primary coverage. Hence, the omission of such a provision in this section cannot be dismissed as inadvertent. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

**Nor is there any compelling public policy basis for reading a primary-insurer require-**

**ment into the statutory scheme.** The public policy behind Colorado's mandatory-insurance laws only requires that the public benefit from insurance coverage, not that any insurer be primary. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 246 P.3d 651 (Colo. 2011).

**Nor does industry custom compel the vehicle owner's insurer be primary.** Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 246 P.3d 651 (Colo. 2011).

**Insureds and insurers are not prohibited from determining by contract what coverages are primary and what coverages are excess as to compulsory coverage.** Accident victims are equally protected by compulsory coverage that is primary or multiple coverages that are co-primary. Thus, there is no need to abrogate the freedom of contract between insureds and insurers regarding primacy of coverages. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

**Insurance policy's "excess clause", which made coverage secondary to other collectible insurance, was not void as an erosion of the statutory mandate that vehicle owners carry minimum liability insurance.** Court contrasted excess clause, which limited coverage to the extent that other coverage existed, with "escape clause", whereby an insurer provides no coverage if other insurance applied. Shelter Mut. Ins. Co. v. Mid-Century Ins. Co., 214 P.3d 489 (Colo. App. 2008), aff'd, 246 P.3d 651 (Colo. 2011).

**Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy.** Gov't Employees Ins. Co. v. Brown, 739 F. Supp. 2d 1317 (D. Colo. 2010).

**Where insureds gave the keys to their truck to the driver and informed him that he could drive the truck to work without asking for further permission,** the driver had the initial permission of the insureds necessary to trigger the insurance protection required by the Colorado Auto Accident Reparations Act. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

**Initial permission from the primary insured to use the vehicle** is all that is required to confer coverage under the Colorado Auto Accident Reparations Act. Wiglesworth v. Farmers Ins. Exch., 917 P.2d 288 (Colo. 1996).

**Applied** in Ohio Cas. Ins. Co. v. Guaranty Nat'l Ins. Co., 197 Colo. 264, 592 P.2d 397



(1979); *In re United States Court of Appeals v. Criterion Ins. Co.*, 198 Colo. 132, 596 P.2d 1203

(1979); *Golting v. Hartford Accident & Indem. Co.*, 43 Colo. App. 337, 603 P.2d 972 (1979).

**10-4-620. Required coverage.** Subject to the limitations and exclusions authorized by this part 6, the basic coverage required for compliance with this part 6 is legal liability coverage for bodily injury or death arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of twenty-five thousand dollars to any one person in any one accident and fifty thousand dollars to all persons in any one accident and for property damage arising out of the use of the motor vehicle to a limit, exclusive of interest and costs, of fifteen thousand dollars in any one accident.

**Source:** L. 2003: Entire section added, p. 1561, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-617 in House Bill 03-1188 but has been renumbered on revision for ease of location.

## ANNOTATION

**Law reviews.** For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "The Responsibility of the Insurer Once a Driver is Given Initial Permission", see 15 Colo. Law 1041 (1986).

**Annotator's note.** Since this section is similar to § 10-4-706(1)(a) as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

**Nothing in this section suggests the general assembly considered loss of consortium to be a separate bodily injury** that must be insured against in all insurance policies. Thus an insurer need not offer either liability or uninsured motorist insurance which separately covers a loss of consortium claim to be in compliance with this section. *Spaur v. Allstate Ins. Co.*, 942 P.2d 1261 (Colo. App. 1996).

**An insurance policy is a contract that should be interpreted consistently with principles of contract law.** A reviewing court should give the words of an insurance policy their plain and ordinary meaning unless the intent of the parties, as expressed in the policy, indicates a contrary intent. However, when the provisions are ambiguous, they are construed against the drafting party. *Farmers Ins. Exch. v. Wiglesworth*, 903 P.2d 659 (Colo. App. 1994), *rev'd* on other grounds, 917 P.2d 288 (Colo. 1996).

**"Household exclusion" clause against public policy.** A household exclusion clause, excluding coverage of family members residing in the same household, is void as against public policy. *Meyer v. State Farm Mut. Auto. Ins. Co.*, 689 P.2d 585 (Colo. 1984) (decided prior to 1986 enactment of § 10-4-418 (2)(b)).

**Physical damage waiver contained in automobile rental agreement was so significantly restricted it was unconscionable,** and lessor could not enforce a limitation on such waiver which excluded damages caused when driver

was under influence of drugs or intoxicants when it brought action against lessee to recover for total destruction of automobile which occurred while lessee was intoxicated. *Davis v. M.L.G. Corp.*, 712 P.2d 985 (Colo. 1986).

Automobile lessor impermissibly attempted to limit the statutory requirements of subsection (1) which requires automobile liability coverage by conditioning its compulsory liability coverage for property damage on compliance with its lease's provisions. *Davis v. M.L.G. Corp.*, 712 P.2d 985 (Colo. 1986).

Common-law obligations by contract may be altered by parties to bailment or lease of an automobile, provided such contract does not contravene public policy or violate a statute. *Davis v. M.L.G. Corp.*, 712 P.2d 985 (Colo. 1986).

**Initial permission from the primary insured to use the vehicle** is all that is required to confer coverage. *Wiglesworth v. Farmers Ins. Exch.*, 917 P.2d 288 (Colo. 1996).

**The clause "exclusive of interest and costs" must be given meaning** and therefore the minimum legal liability coverage mandated by this section means \$25,000 of benefits plus any interests and costs attendant thereto. *Bjorkman v. Bjorkman v. Steenrod*, 762 P.2d 706 (Colo. App. 1988).

**Prejudgment interest is subject to the policy limits.** Prejudgment interest is an element of damages included within the damages coverages of an insurance policy and subject to the policy limit for such coverage. *Allstate Ins. Co. v. Allen*, 797 P.2d 46 (Colo. 1990).

**Mandatory coverage of \$25,000 exclusive of interest and costs** establishes minimum applicable to initial amount of damages suffered and not exclusion from liability. *Garceau v. Iowa Kemper Ins. Co.*, 859 P.2d 243 (Colo. App. 1993).

**Where each of three identical vehicle insurance policies contained language limiting the**

insurer's liability to the maximum amount recoverable under any one policy, such provisions prohibited the "stacking" of liability coverage under the three policies. The fact that separate premiums were paid on each policy is not dispositive and does not alter the plain wording of the policies. *Am. Standard Ins. Co. v. Ekeroth*, 791 P.2d 1220 (Colo. App. 1990).

**The provisions of this section and § 10-4-705 do not mandate a minimum coverage for every policy.** Rather, the purpose of these statutes is to impose upon motor vehicle owners a mandated level of insurance coverage for their vehicles. Since the insurer limited its total liability under all three identical vehicle insurance policies to the requisite statutory minimum and since each policy therefore complied with the insured's statutory obligation, there was no conflict with this section and § 10-4-107. *Am. Standard Ins. Co. v. Ekeroth*, 791 P.2d 1220 (Colo. App. 1990), cert. denied, 797 P.2d 1299 (Colo. 1990).

**This section and § 10-4-623 (1) deal with mandated minimum liability coverages and have no application to the crime exclusion in the insurance policy** because the exclusion applies to supplemental coverage that is in addition to, and separate from, the mandatory coverage. *Lincoln Gen. Ins. Co. v. Bailey*, 224 P.3d 336 (Colo. App. 2009), aff'd, 255 P.3d 1039 (Colo. 2011).

**Any construction of the policy's exclusion, if inconsistent with the Act, renders the exclusion void.** *Great Plains Ins. Co., Inc. v. Angerman*, 833 P.2d 810 (Colo. App. 1991).

**Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy.** *Gov't Employees Ins. Co. v. Brown*, 739 F. Supp. 2d 1317 (D. Colo. 2010).

**10-4-621. Required coverages are minimum.** (1) Nothing in this part 6 shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverage required by section 10-4-620, nor to require the segregation of such minimum coverage from other coverages in the same policy. However, loss statistics as to bodily injury liability and property damage liability shall be kept separately for rating purposes, and such statistics shall be filed with the commissioner each year.

(2) On and after January 1, 2005, all insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor vehicle, if the accident occurs within the United States or its territories or possessions.

(3) No insurer may surcharge, refuse to write, cancel, or nonrenew a complying policy of automobile insurance based solely on the method of compliance or level of coverage chosen, as long as the requirements are met under section 42-3-105 (1) (d) (I) or (1) (f), C.R.S.

**Source:** L. 2003: Entire section added, p. 1561, § 3, effective July 1. L. 2004: (2) amended, p. 173, § 1, effective January 1, 2005. L. 2006: (3) amended, p. 1491, § 14, effective June 1.

**Editor's note:** This section was originally numbered as § 10-4-618 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**10-4-622. Required provision for intrastate and interstate operation.** (1) Notwithstanding any of its terms and conditions, every complying policy shall afford coverage at least as extensive as the minimum coverage required by section 10-4-620.

(2) Nothing in this section shall be construed to require that a complying policy provide coverage while the insured motor vehicle is operated in other jurisdictions by reason of any program, statute, law, or administrative rule in effect in such other jurisdiction by which coverage is afforded in such other jurisdiction through a government agency or publicly financed auto accident reparations plan such as, by way of illustration and not limitation, plans presently in effect in the province of Saskatchewan, Canada, and the commonwealth of Puerto Rico, U.S.A.



(3) On and after January 1, 2005, notwithstanding any of its other terms and conditions, every complying policy shall afford coverage at least as extensive as the minimum coverage required by operation of section 10-4-620, during such periods of time as the insured motor vehicle is operated in other jurisdictions of the United States or its territories or possessions, as the statutes, laws, or administrative rules of such other jurisdictions require with respect to liability or financial responsibility and direct benefit or first-party coverages for operators, occupants, and persons involved in accidents arising out of use or operation of motor vehicles within such other jurisdictions.

(4) (a) Notwithstanding any of its other terms and conditions, every contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle, shall provide coverage at least as extensive as the minimum coverages required by operation of section 10-4-620, and qualifies as security covering the vehicle while it is in this state.

(b) An insurer authorized to transact or transacting business in this state may not exclude the minimum coverage required by operation of section 10-4-620 in any contract of liability insurance for injury, wherever issued, covering ownership, maintenance, or use of a motor vehicle while it is in this state.

**Source:** L. 2003: Entire section added, p. 1561, § 3, effective July 1. L. 2004: (2) amended, p. 902, § 22, effective May 21; (3) amended, p. 173, § 2, effective January 1, 2005.

**Editor's note:** This section was originally numbered as § 10-4-619 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**10-4-623. Conditions and exclusions.** (1) The coverage described in section 10-4-620 may be subject to conditions and exclusions that are not inconsistent with the requirements of this part 6.

(2) The coverage described in section 10-4-620 may also be subject to exclusions where the injured person:

- (a) Sustains injury caused by his or her own intentional act; or
- (b) Is operating a motor vehicle as a converter without a good faith belief that he or she is legally entitled to operate or use such vehicle.

(3) (a) The coverage described in section 10-4-620 is conditioned upon the insurer offering coverages pursuant to section 10-4-609 (1).

(b) The insurer shall be deemed to have complied with the requirements of section 10-4-609 (1) and the exclusion of the insured from uninsured motorist coverage shall be deemed valid if the named insured has rejected the uninsured motorist coverage in writing. Such exclusion shall be continuing until such time as the insured requests that the insurer provide uninsured motorist coverage. The insurer shall not have a duty to offer uninsured motorist coverage after receiving the insured's written request for exclusion even though:

- (I) The vehicles insured under the policy have changed; or
- (II) The policy is reinstated, transferred, substituted, amended, altered, modified, replaced, or renewed.

(c) The insurer shall be deemed to have complied with section 10-4-609 (1) and the insured's uninsured motorist coverage shall be deemed valid if the insurer has offered coverage at available levels and the insured has selected coverage of a certain value. The insurer shall not have a duty to offer changes in uninsured motorist coverage to the insured even though:

- (I) The vehicles covered under the policy have changed; or
- (II) The policy is reinstated, transferred, substituted, amended, altered, modified, replaced, or renewed; except that, if there is an increase in bodily injury liability limits and the limits of the uninsured motorist coverage would be less than such limits, the insurer shall offer new uninsured motorist coverage to the insured pursuant to section 10-4-609 (2).

**Source:** L. 2003: Entire section added, p. 1562, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-620 in House Bill 03-1188 but has been renumbered on revision for ease of location.

## ANNOTATION

**Law reviews.** For article, "The Responsibility of the Insurer Once a Driver is Given Initial Permission", see 15 Colo. Law. 1041 (1986).

**Annotator's note.** Since this section is similar to § 10-4-712 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

**"Household exclusion" clause invalid** because it is neither authorized by statute nor in harmony with the legislative purpose of this act. *Meyer v. State Farm Mut. Auto. Ins. Co.*, 689 P.2d 585 (Colo. 1984) (decided prior to 1986 amendment).

**Household exclusion clauses in automobile insurance policies issued after effective date of § 10-4-418, are valid**, and the provision in that section stating that exclusion clauses are compatible with state public policy applies prospectively. *Coffman v. State Farm Mut. Auto Ins. Co.*, 884 P.2d 275 (Colo. 1994).

**Exclusion for bodily injury to employees that was intended to avoid duplication of benefits available under the Workers' Compensation Act is enforceable even when the employer failed to obtain workers' compensation insurance** because coverages required under § 10-4-706 can be excluded under subsection (1) of this section so long as the exclusion is not contrary to the public policy expressed in § 10-4-702 to avoid inadequate compensation, and injured employee had a remedy under § 8-43-408 of the Workers' Compensation Act. *Canal Ins. Co. v. Nix*, 7 P.3d 1038 (Colo. App. 1999).

**Subsection (1) of this section and § 10-4-620 deal with mandated minimum liability coverages and have no application to the crime exclusion** in the insurance policy because the exclusion applies to supplemental coverage that is in addition to, and separate from, the mandatory coverage. *Lincoln Gen. Ins. Co. v. Bailey*, 224 P.3d 336 (Colo. App. 2009), *aff'd*, 255 P.3d 1039 (Colo. 2011).

**Exclusion in insurance policy for bodily injury or property damage caused intentionally by or at the direction of an insured does not violate the mandatory liability insurance statute or the state's public policy.** *Gov't Employees Ins. Co. v. Brown*, 739 F. Supp. 2d 1317 (D. Colo. 2010).

**Factual determination made during workers' compensation hearing does not bar a determination of claimant's entitlement to PIP benefits under doctrine of collateral estoppel.** Determination that claimant was driving employer's vehicle outside scope of employment not determinative of whether she was acting as converter of the vehicle and therefore might not be entitled to PIP benefits. *Maryland Cas. Co. v. Messina*, 874 P.2d 1058 (Colo. 1994).

**The business use delivery exclusion is invalid and unenforceable** under the no-fault act because it is not authorized by statute or in harmony with the legislative purpose of mandating liability coverage to avoid inadequate compensation. *St. Paul Fire and Marine Ins. Co. v. Mid-Century Ins. Co.*, 18 P.3d 854 (Colo. App. 2001).

**10-4-624. Self-insurers.** (1) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner.

(2) The commissioner may, in his or her discretion, upon the application of such person, issue a certificate of self-insurance when the commissioner is satisfied that such person is able and will continue to be able to pay benefits as required under section 10-4-620 and to pay any and all judgments that may be obtained against such person. Upon not less than five days' notice and a hearing pursuant to such notice, the commissioner may, upon reasonable grounds, cancel a certificate of self-insurance. Failure to pay any benefits under section 10-4-620 or failure to pay any judgment within thirty days after such judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(3) For purposes of subsection (2) of this section, the commissioner shall accept, as proof that a motor carrier as defined in article 10.1 of title 40, C.R.S., is able and will continue to be able to pay all judgments that might be obtained against the carrier, a surety bond in a form acceptable to the commissioner in an amount determined by the commissioner sufficient to ensure that the carrier has the ability to pay all judgments that may be obtained against any such carrier.



**Source: L. 2003:** (2) amended, p. 2433, § 3, effective June 5; entire section added, p. 1563, § 3, effective July 1. **L. 2011:** (3) amended, (HB 11-1198), ch. 127, p. 417, § 6, effective August 10.

**Editor's note:** This section was originally numbered as § 10-4-621 in House Bill 03-1188 but has been renumbered on revision for ease of location.

#### ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-716 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

**Provisions of act with regard to self-insurers do not limit obligation** that every owner of

a motor vehicle provide liability coverage for bodily injury arising from the vehicle's permissive use. *Barnes v. Whitt*, 852 P.2d 1322 (Colo. App. 1993).

**10-4-625. Premium payments.** The commissioner shall issue rules establishing monthly, quarterly, semiannual, and annual premium payments for persons who are required to purchase insurance under this part 6. An insurer providing a plan for payments on a basis that is more frequent than quarterly need not also provide a quarterly payment plan. An insurer's plan for payments may provide for payment of an advance deposit premium.

**Source: L. 2003:** Entire section added, p. 1563, § 3, effective July 1. **L. 2008:** Entire section amended, p. 386, § 1, effective August 5.

**Editor's note:** This section was originally numbered as § 10-4-622 in House Bill 03-1188 but has been renumbered on revision for ease of location.

#### ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-718 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

**This section constitutes declaration of policy that insurance payments can be paid in quarterly installments.** *Golting v. Hartford Accident & Indem. Co.*, 43 Colo. App. 337, 603 P.2d 972 (1979).

**10-4-626. Prohibited reasons for nonrenewal or refusal to write policy of automobile insurance applicable to this part 6.** (1) No insurer authorized to transact or transacting business in this state shall refuse to write or refuse to renew a policy of insurance affording the coverage required by operation of section 10-4-620 solely because of the age, race, creed, color, religion, sex, sexual orientation, national origin, ancestry, residence, marital status, or lawful occupation, including the military service, of anyone who is or seeks to become insured or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce this subsection (1).

(2) Nothing in this section shall be construed to prohibit an insurance company authorized to transact or transacting business in this state from issuing policies of insurance affording the coverage required by operation of section 10-4-620 solely to a specialty market authorized by the commissioner.

**Source: L. 2003:** Entire section added, p. 1563, § 3, effective July 1. **L. 2008:** (1) amended, p. 1599, § 13, effective May 29.

**Editor's note:** This section was originally numbered as § 10-4-623 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 341, Session Laws of Colorado 2008.

## ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-719 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, a relevant case construing that provision has been included in the annotations to this section.

**Insurers failure to notify insureds clearly and unequivocally of its cancellation of cov-**

erage constituted a course of conduct which led insureds, as ordinary laypersons, reasonably to believe that by properly endorsing and returning their premium payment their personal injury coverage would remain in effect or be reinstated. *Leland v. Travelers Indem. Co. of Illinois*, 712 P.2d 1060 (Colo. App. 1985).

**10-4-627. Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.** (1) An insurer shall not:

(a) Cancel or nonrenew, or increase the premium of, a policy of insurance on a motor vehicle used by any resident of the household of the named insured solely because of convictions for traffic violations that resulted in less than seven points being assessed under the point system schedule set forth in section 42-2-127 (5), C.R.S., resulting from violations while in the course of employment while the insured is driving a motor vehicle used primarily as a public or livery conveyance or licensed as a commercial vehicle; or

(b) Add a surcharge to the policy premium of an insured or a family member of an insured or other person living in the same household as an insured in a manner that results in an excessive or unfairly discriminatory premium pursuant to section 10-4-403.

(2) This section shall not be construed to limit or in any manner restrict an insurer from cancelling or refusing to issue or renew a policy of insurance or from increasing the premium of an insured on a motor vehicle used by him or her for commercial purposes or from reclassifying an insured for traffic violations received by the insured while using a motor vehicle for commercial purposes.

**Source: L. 2003:** Entire section added, p. 1564, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-624 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**10-4-628. Refusal to write - changes in - cancellation - nonrenewal of policies prohibited.** (1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, permissive user, or any resident of the household of the applicant or insured has:

(a) Had an accident or accidents that are not the fault of such named applicant, insured, household member, or permissive user;

(b) Had a license suspended pursuant to section 42-2-127.5, C.R.S., or been denied a license pursuant to section 42-2-104 (3) (f), C.R.S.

(2) (a) (I) No insurer shall cancel; fail to renew; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy solely because the insured person has been convicted of an offense related to the failure to have in effect compulsory motor vehicle insurance or because such person has been denied issuance of a motor vehicle registration for failure to have such insurance.

(II) Unless actuarial justification in support of the insurer's action that has been filed with the commissioner demonstrates that there is an increase in risk, no insurer shall refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan based solely upon:

(A) The fact that the applicant had no prior insurance;

(B) The identity of the applicant's prior insurer; or



(C) The applicant's prior type of coverage, including assigned risk or residual market coverage or any plan other than a preferred plan.

(III) An insurer may use industry-wide data in its actuarial justification under subparagraph (II) of this paragraph (a).

(IV) An insurer shall not refuse to write a policy for a new applicant, surcharge the premium of a new applicant, or place a new applicant in a higher-priced program or plan solely because the applicant had no prior insurance if the applicant was not required to have insurance under section 10-4-620 or under a similar law in another state.

(V) An insurer shall not reduce or cancel insurance coverage except for nonpayment, refuse to issue or renew a policy, or surcharge a newly issued or renewed policy due to a covered person's failure to maintain coverage during a period in which the covered person was deployed by or called to active duty in the United States military if the person was not required to maintain insurance under section 10-4-619 or under a similar law of another state.

(b) (I) An insurer shall not refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person in a household by name pursuant to section 10-4-630 if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

(III) An insurer renewing a policy pursuant to subparagraph (II) of this paragraph (b) shall include, as part of such renewal, a written notice naming the party specifically excluded from coverage.

(3) An insured who believes subsection (1) or (2) of this section have been violated has the right to file a complaint with the division of insurance pursuant to section 10-4-629.

(4) The commissioner shall promulgate rules to implement this section.

**Source:** **L. 2003:** Entire section added, p. 1564, § 3, effective July 1. **L. 2004:** (2)(b)(II) and (3) amended, p. 1189, § 13, effective August 4. **L. 2005:** (2)(a)(V) added, p. 220, § 1, effective April 14. **L. 2009:** (1)(b) amended, (HB 09-1266), ch. 347, p. 1816, § 7, effective August 5. **L. 2012:** (3) amended, (HB 12-1289), ch. 95, p. 313, § 2, effective August 8.

**Editor's note:** (1) This section was originally numbered as § 10-4-625 in House Bill 03-1188 but has been renumbered on revision for ease of location.

(2) Section 3 of chapter 95, Session Laws of Colorado 2012, provides that the act amending subsection (3) applies to complaints filed with the division of insurance on or after August 8, 2012.

**10-4-629. Cancellation - renewal - reclassification.** (1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.

(2) An insurer intending to take an action subject to this section shall, on or before the thirtieth day before the effective date of the intended action, send written notice by United States mail of its intended action to the insured at the insured's last-known address. The insurer may include the notice of the intended action in the renewal documents, nonrenewal, or cancellation notice provided to the policyholder, as applicable. The notice must state in clear and specific terms, on a form for which the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

(a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;

(b) The proposed effective date of the action;

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

(d) If there is coupled with the notice an offer to continue or renew the policy in accordance with this section, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;

(e) The right of the insured to replace the insurance through an assigned risk plan;

(f) The right of the insured to file a complaint with the division of insurance regarding the action that is the subject of the notice.

(g) and (h) Repealed.

(3) Any statement of reasons contained in the notice given pursuant to paragraph (c) of subsection (2) of this section shall be privileged and shall not constitute grounds for any action against the insurer or its representatives or any person who in good faith furnished to the insurer the information upon which the statement is based.

(4) to (8) Repealed.

(9) This section does not apply to an insurance policy or coverage that has been in effect less than sixty days at the time the insurer mails or delivers the notice of cancellation, nonrenewal, or reclassification, unless it is a renewal policy.

**Source:** **L. 2003:** Entire section added, p. 1566, § 3, effective July 1. **L. 2004:** (6) amended, p. 178, § 1, effective July 1; (2)(d) amended, p. 1190, § 14, effective August 4. **L. 2010:** (6) amended, (HB 10-1220), ch. 197, p. 853, § 14, effective July 1. **L. 2012:** IP(2), (2)(f), and (9) amended and (2)(g), (2)(h), and (4) to (8) repealed, (HB 12-1289), ch. 95, p. 311, § 1, effective August 8.

**Editor's note:** (1) This section was originally numbered as § 10-4-626 in House Bill 03-1188 but has been renumbered on revision for ease of location.

(2) Section 3 of chapter 95, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (2) and subsections (2)(f) and (9) and repealing subsections (2)(g), (2)(h), and (4) to (8) applies to complaints filed with the division of insurance on or after August 8, 2012.

## ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-720 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

**Endorsement was not a decrease in coverage requiring approval by the Commissioner** since the household exclusion was not void and since the statute containing the legislative declaration on the household exclusion was enacted at the time the policy was in effect. *Coffman v. Coffman*, 865 P.2d 856 (Colo. App. 1993).

**The statute is not clear and unambiguous with respect to whether an insurer, when pro-**

**viding the required notice to an insured, must refer to the rule, policy, or guidelines on which it bases its decision.** Requiring such a reference is a reasonable interpretation that is not arbitrary, capricious, or inconsistent with statute, and the commissioner's disallowance of a proposed increase of premium charged to an insured was upheld accordingly. *Colo. Div. of Ins. v. Midwest Mut. Ins. Co.*, 961 P.2d 1158 (Colo. App. 1998).

**Notice requirements of this section do not apply to binders** because binders are not "insurance policies". *Unigard Sec. Ins. v. Mission Ins. Co.*, 12 P.3d 296 (Colo. App. 2000).

**10-4-630. Exclusion of named driver.** (1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile



liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

(2) With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses, or claims arising out of this operation or use of the insured motor vehicle, whether or not such operation or use was with the express or implied permission of a person insured under the policy.

**Source:** L. 2003: Entire section added, p. 1568, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-627 in House Bill 03-1188 but has been renumbered on revision for ease of location.

### ANNOTATION

**Annotator's note.** Since this section is similar to § 10-4-721 as it existed prior to the 2003 repeal of part 7 of article 4 of this title, relevant cases construing that provision have been included in the annotations to this section.

**This section unambiguously authorizes an automobile insurer to exclude from coverage all liability arising from use of an automobile by a specifically named driver.** *Sersion v. Dairyland Ins. Co.*, 757 P.2d 1169 (Colo. App. 1988); *Principal Mut. Life Ins. Co. v. Progressive Mountain Ins. Co.*, 1 P.3d 250 (Colo. App. 1999), *aff'd*, 27 P.3d 343 (Colo. 2001).

Trial court properly granted summary judgment in favor of the defendants as insured's son was not an insured driver of the automobile. *Sersion v. Dairyland Ins. Co.*, 757 P.2d 1169 (Colo. App. 1988).

**An insurer may exclude a named driver from all coverage**, including UM/UIM coverage, while the excluded driver is operating the vehicle. The exclusion of the named driver extends to preclude recovery by a resident relative passenger of the named driver. *Massingill v. State Farm Mut. Auto. Ins.*, 176 P.3d 816 (Colo. App. 2007).

**Public policy not violated** for failure to carry uninsured motorist coverage for a particularly excluded driver or his or her innocent passenger. *Lopez v. Dairyland Ins. Co.*, 890 P.2d 192 (Colo. App. 1994).

**Exclusion of a claim for negligent entrustment from an automobile policy is authorized under this section.** *State Farm Mut. Auto. Ins. Co. v. Graham*, 860 P.2d 566 (Colo. App. 1993).

**Exclusion endorsement which provided that insurer would not be liable for damages, losses, or claims arising out of the operation or use of the insured motor vehicle by the named excluded person**, which tracked the language of this section, was not ambiguous and therefore enforceable. *State Farm Mut. Auto. Ins. Co. v. Graham*, 860 P.2d 566 (Colo. App. 1993).

**Summary judgment in favor of insured defendant was proper** where plaintiff was injured while a passenger in a vehicle driven by a person specifically excluded from insurance coverage under this section, and no obligation to provide uninsured motorist coverage exists. *Lopez v. Dairyland Ins. Co.*, 890 P.2d 192 (Colo. App. 1994).

**10-4-631. Insurers to file rate schedule.** Any insurer authorized to transact or transacting business in this state shall file a schedule of insurance rates for the minimum coverages required under this part 6 no later than July 1, 2003. The commissioner shall make the information required by this section open to public inspection no later than July 1, 2003.

**Source:** L. 2003: Entire section added, p. 1568, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-628 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**10-4-632. Reduction in rates for drivers aged fifty-five years or older who complete driver's education course - legislative declaration.** (1) (a) (I) The general assembly

finds and determines that motor vehicle accidents cause a substantial economic impact in lost wages, medical bills, legal fees, rehabilitation costs, and higher insurance rates.

(II) The general assembly also finds that the motor vehicle accident rate creates an additional societal burden in the form of taxes for medicaid, for the medically indigent, and for other hospital-related costs.

(III) The general assembly further finds that the number of such accidents and injuries is positively affected when drivers fifty-five years of age or older take driver's education courses.

(b) Therefore, the general assembly declares that it is appropriate and beneficial to all the people of Colorado that drivers fifty-five years of age or older with recent training and good driving records pay experience-based insurance premiums.

(c) A financial incentive in the form of lower premiums will prompt drivers fifty-five years of age or older to take driver's education courses and will further the goal of the general assembly to reduce accident-related injuries and fatalities in Colorado.

(2) All rates, rating schedules, and rating manuals for liability and collision coverages of a motor vehicle insurance policy submitted to or filed with the commissioner under this part 6 shall provide for an appropriate reduction in premium charges based on justifiable data when the vehicle is a covered vehicle and when the principal operator is fifty-five years of age or older and has successfully completed a driver's education course taught by a driving school regulated pursuant to article 15 of title 12, C.R.S., or by a nonprofit corporation subject to articles 121 to 137 of title 7, C.R.S., if such course has been preapproved by the department of revenue. Any discount used by an insurer shall be presumed appropriate unless credible data demonstrates otherwise. Insurers shall provide the commissioner with data reflecting the claims experience of drivers who have received reductions in premium charges compared with the claims experience of drivers who have not received such reductions.

(3) Each person who successfully completes a driver's education course taught by a commercial driving school regulated pursuant to article 15 of title 12, C.R.S., shall be issued a certificate by the commercial driving school offering the course, which certificate shall be evidence of qualification for the premium discount required by this section.

(4) Each person who successfully completes a driver's education course taught by a nonprofit corporation subject to articles 121 to 137 of title 7, C.R.S., if such course has been preapproved by the department of revenue, shall be issued a certificate by the nonprofit corporation offering the course, which certificate shall be evidence of qualification for the premium discount required by this section.

(5) The premium reduction required by this section shall be effective for an insured for a three-year period after successful completion of the approved course. However, the insurer may require, as a condition of providing and maintaining such discount, that the insured, during the three-year period after course completion, not be involved in an accident for which the insured is held at fault.

(6) An insured may renew qualification for the discount provided by this section by:

(a) (I) Retaking a driver's education course taught by a commercial driving school regulated pursuant to article 15 of title 12, C.R.S.; or

(II) Retaking a driver's education course taught by a nonprofit corporation subject to articles 121 to 137 of title 7, C.R.S., if such course has been preapproved by the department of revenue; and

(b) Not being involved in an accident for which the insured is held at fault.

(7) This section shall not apply where an insured driver is taking a driver's education course as a result of an order of a court or other governmental entity resulting from a moving traffic violation.

**Source:** L. 2003: Entire section added, p. 1568, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-629 in House Bill 03-1188 but has been renumbered on revision for ease of location.



**10-4-633. Certification of policy and notice forms.** (1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

**Source: L. 2003:** Entire section added, p. 1570, § 3, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-630 in House Bill 03-1188 but has been renumbered on revision for ease of location.

**10-4-633.5. Automobile insurance policies - plain language required - rules.**

(1) (a) An insurer issuing or renewing automobile insurance policies subject to this part 6 shall not issue or renew a policy unless the text of the policy form does not exceed the tenth-grade level, as measured by the Flesch-Kincaid grade level formula, or does not score less than fifty as measured by the Flesch reading ease formula.

(b) In conjunction with the report submitted to the commissioner pursuant to section 10-4-633, the insurer shall report the readability scores prior to the issuance or renewal of a policy or the use of the policy form.

(2) The policy form shall contain an index or table of contents if the policy is more than three pages in length or if the text of the policy exceeds three thousand words. The index, table of contents, and text of the policy form shall be printed in not less than ten-point type.

(3) For purposes of subsection (1) of this section, the following shall apply:

(a) (I) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall count as one word;

(II) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and

(III) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciations containing fewer syllables may be used.

(b) "Text" includes all printed matter except the following:

(I) The name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; and specification pages, schedules, or tables; and

(II) Any policy language that is drafted to conform to the requirements of any federal law or regulation; any policy language required by any collectively bargained agreement; any medical terminology; any words that are defined in the policy; and any policy language required by law or regulation if the insurer identifies the language or terminology excepted and certifies in writing that the language or terminology is entitled to be excepted.

(4) The commissioner shall promulgate rules regarding the electronic dissemination of newly issued or renewed policy forms or endorsements.

(5) (a) The requirements of this section shall not apply to commercial automobile insurance coverage.

(b) For the purpose of this subsection (5), "commercial automobile insurance coverage" means any insurance coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial automobile, garage, motor carrier, or truckers coverage policy form and rated using either a commercial manual or rating rule.

**Source: L. 2010:** Entire section added, (HB 10-1166), ch. 143, p. 486, § 1, effective January 1, 2012.

**10-4-634. Assignment of payment for covered benefits.** (1) On and after thirty days after April 5, 2004, a policy of motor vehicle insurance coverage pursuant to this part 6 shall allow, but not require, an insured under the policy to assign, in writing, payments due under medical payments coverage of the policy to a licensed hospital or other licensed health care provider, an occupational therapist as defined in section 12-40.5-103, C.R.S., or a massage therapist as defined in section 12-35.5-103 (8), C.R.S., for services provided to the insured that are covered under the policy.

(2) When a licensed hospital or other licensed health care provider, occupational therapist, or massage therapist receives an assignment from an insured, it is the responsibility of the provider to bill the insurer and notify the insurer that the licensed health care provider holds an assignment on file. The insurer shall honor this assignment the same as if a copy of the assignment had been received by the insurer. Only upon request of the insurer shall the health care provider be required to provide a copy of the assignment. The provider shall also provide a copy of such bill to the insured, stating on such copy that it is for informational purposes only and that the insurer has been billed for covered benefits. The provider shall also furnish to the insurer a current taxpayer identification number as part of the initial bill and each subsequent billing. Subsequent billings to an insurer need not include a copy of the assignment unless required by the insurer so long as it is clearly noted on each such subsequent billing that the benefits have been assigned. The insurer shall honor such assignment and make payment of covered benefits directly to such licensed hospital or other licensed health care provider, occupational therapist, or massage therapist. If the insurer fails to honor such assignment but instead makes payment to the insured, and if the insured fails to timely pay an amount equivalent to such payment to the licensed hospital or other licensed health care provider, then the insurer shall be liable for such payment directly to the licensed hospital or other licensed health care provider, occupational therapist, or massage therapist. It shall be the responsibility of the licensed hospital or other licensed health care provider, occupational therapist, or massage therapist to notify the insurer if timely payment has not been received.

**Source: L. 2004:** Entire section added, p. 250, § 1, effective April 5. **L. 2008:** (1) amended, p. 830, § 5, effective July 1. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1943, § 14, effective August 5. **L. 2010:** (1) amended, (HB 10-1220), ch. 197, p. 855, § 19, effective July 1.

**10-4-635. Medical payments coverage - definitions.** (1) (a) Except as otherwise provided in this subsection (1), no automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided in the



policy or in a supplemental policy for medical payments with benefits of five thousand dollars for bodily injury, sickness, or disease resulting from the ownership, maintenance, or use of the motor vehicle.

(b) A policy may be issued without medical payments coverage only if the named insured rejects medical payments coverage in writing or in the same medium in which the application for the policy was taken. The insurer shall maintain proof that a named insured rejected medical payments coverage for at least three years after the date of the rejection, and such proof of rejection shall be presumed valid for all insureds under the policy, including resident relatives of the named insured and permissive users of the motor vehicle. An agent or insurer that obtains a rejection of medical payments coverage from the named insured or applicant pursuant to this section shall not be liable to the insured or any other person seeking benefits under the named insured's policy for claims arising out of or relating to the rejection of medical payments coverage.

(c) If the insurer fails to offer medical payments coverage or fails to maintain or provide proof that the named insured rejected medical payments coverage in the manner required by this section, the insured's policy shall be presumed to include medical payments coverage with benefits of five thousand dollars.

(d) If an insured selects limits for medical payments coverage or exercises the option not to purchase the coverages described in this section, an insurer or affiliated insurer shall not be required to notify any policyholder in any renewal or replacement policy of the availability of medical payments coverage. However, the insured may make a request for additional coverage or coverage more extensive than that provided on a prior policy.

(e) Nothing in this section shall be construed to limit any other coverage amounts being made available by an insurer.

(2) (a) If a policy contains medical payments coverage, medical payments benefits shall be paid to persons providing medically necessary and accident-related trauma care or medical care. Except as provided in paragraphs (b), (c), and (d) of this subsection (2), payments of claims for medical payments coverage shall be made in accordance with section 10-4-642.

(b) Upon receiving notice, either from a provider or the insured, of an accident for which the medical payments coverage specified in this section or medical payments coverage in a greater amount may apply, the insurer shall reserve five thousand dollars of the medical payments coverage for the payment of trauma care provided by a licensed air ambulance, licensed ambulance, trauma physician, or trauma center in the following priority, as applicable:

(I) Benefits shall be paid first to licensed ambulances or air ambulances that provide trauma care at the scene of or immediately after the motor vehicle accident, including transport to or from a trauma center.

(II) After payments to providers described in subparagraph (I) of this paragraph (b), benefits shall be paid next to trauma physicians that provide trauma care to stabilize or provide the first episode of care to the injured person.

(III) After payments to providers described in subparagraphs (I) and (II) of this paragraph (b), benefits shall be paid next to trauma centers designated as level IV or V pursuant to section 25-3.5-703 (4), C.R.S., that provide trauma care to stabilize or provide the first episode of care to the injured person.

(IV) After payments to providers described in subparagraphs (I), (II), and (III) of this paragraph (b), benefits shall be paid next to trauma centers designated as level I, II, or III or as a regional pediatric trauma center pursuant to section 25-3.5-703 (4), C.R.S., that provide trauma care to stabilize or provide the first episode of care to the injured person.

(c) The reserve shall be held and used to pay claims of trauma care providers described in this subsection (2) for no more than thirty days after receipt of the accident notice. After the thirty-day period, any amount of the reserve for which the insurer has not received a claim for reimbursement from a trauma care provider described in this subsection (2) may be used to pay any other claims for reimbursement submitted by other providers.

(d) The periods specified in section 10-4-642 for the prompt payment of medical payments coverage benefits shall be tolled for the period that an insurer is required under this subsection (2) to hold payment of a claim from a provider that did not provide trauma

care, but only to the extent the medical payments coverage benefits not held in reserve are insufficient to pay the claim.

(3) (a) An insurer providing benefits under medical payments coverage in the amount specified in this section or in a greater amount than the amount specified in this section shall not have a right to recover against an owner, user, or operator of a motor vehicle, or against any person or organization legally responsible for the acts or omissions of such person, in any action for damages for benefits paid under such medical payments coverage. An insurer shall not have a direct cause of action against an alleged tortfeasor for benefits paid under medical payments coverage.

(b) Nothing in this subsection (3) shall be construed to:

(I) Modify the requirements of section 13-21-111.6, C.R.S., or any requirements under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.;

(II) Prevent a person to whom benefits are paid under medical payments coverage from obtaining recovery of benefits available under uninsured motorist coverage pursuant to section 10-4-609; or

(III) Afford an insurer a cause of action against a person to whom or for whom the medical payments coverage benefits specified in this section were paid except in a case where the benefits were paid by reason of fraud.

(4) This section shall not apply to:

(a) A person obtaining an automobile liability or motor vehicle policy insuring against loss resulting from the ownership, maintenance, or use of a motorcycle, low-power scooter, or toy vehicle, as defined in section 42-1-102, C.R.S., a snowmobile, as defined in section 33-14-101, C.R.S., or any vehicle designed primarily for use off the road or on rails;

(b) A person that has obtained a certificate of self-insurance from the commissioner pursuant to section 10-4-624.

(5) As used in this section:

(a) "Injured person" means the insured, or a passenger who is authorized by the insured to occupy the insured's motor vehicle, who sustains bodily injury arising out of the use of the insured's motor vehicle.

(b) "Licensed air ambulance" means an air ambulance, as defined in section 25-3.5-103 (1), C.R.S., that is licensed by the department of public health and environment pursuant to section 25-3.5-307, C.R.S.

(c) "Licensed ambulance" means an ambulance, as defined in section 25-3.5-103 (1.5), C.R.S., that is licensed pursuant to section 25-3.5-301, C.R.S.

(d) "Licensed health care provider" shall have the same meaning as set forth in section 10-4-601, and also includes an occupational therapist as defined in section 12-40.5-103 (8), C.R.S.

(e) "Medical care" means all medically necessary and accident-related health care and rehabilitation services provided by a licensed health care provider to a person injured in an automobile accident for which benefits under the terms of the medical payments coverage in the policy are payable.

(f) "Provider" means a licensed health care provider, licensed air ambulance, licensed ambulance, trauma physician, or trauma center.

(g) "Stabilize" means, with respect to a medical condition resulting from a trauma, to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result or occur during the transfer of the individual to or from a trauma center.

(h) "Trauma" means an injury or wound to a living person caused by the application of an external physical force. Trauma includes any event that threatens life, limb, or the well-being of an individual in such a manner that a prudent lay person would believe that immediate medical care is needed.

(i) "Trauma care" means care provided by a licensed ambulance or air ambulance, trauma physician, or trauma center to a person injured in a motor vehicle accident from the time the administration of care begins to the time the patient is fully stabilized or through the first episode of care, not to exceed seventy-two hours after the administration of care begins. The term includes a trauma care system, trauma transport protocols, and triage, as defined in section 25-3.5-703, C.R.S.



(j) "Trauma center" means the emergency department in a licensed or certified hospital or a health care facility that is designated by the department of public health and environment as a level I, II, III, IV, or V facility or as a regional pediatric trauma center.

(k) "Trauma physician" means a trauma surgeon, orthopedic surgeon, neurosurgeon, intensive care unit physician, anesthesiologist, or physician who provides care in a trauma center to a trauma patient injured in a motor vehicle accident.

**Source:** **L. 2004:** Entire section added, p. 415, § 1, effective July 1. **L. 2005:** Entire section amended, p. 467, § 1, effective January 1, 2006. **L. 2006:** (2) repealed, p. 38, § 3, effective January 1, 2007. **L. 2008:** Entire section amended, p. 2261, § 1, effective January 1, 2009. **L. 2009:** (5)(d) amended, (SB 09-292), ch. 369, p. 1943, § 15, effective August 5; (4)(a) amended, (HB 09-1026), ch. 281, p. 1253, § 2, effective October 1. **L. 2010:** (5)(d) amended, (HB 10-1220), ch. 197, p. 855, § 20, effective July 1.

**10-4-636. Disclosure requirements for automobile insurance products offered - rules.** (1) (a) An insurer or producer issuing automobile insurance policies shall, as a condition of doing business in this state, have on file for public inspection at the division a summary disclosure form that contains an explanation of the major coverages and exclusions of such policies of insurance together with a recitation of general factors considered in cancellation, nonrenewal, and increase-in-premium situations. Each summary disclosure form shall provide notice in bold-faced letters that the policyholder should read the policy for complete details, and such disclosure form shall not be construed to replace any provision of the policy itself.

(b) Every insurer and producer shall update disclosure forms periodically to reflect changes in major coverages and exclusions of such policies of insurance and changes in factors considered in cancellation, nonrenewal, and increase-in-premium situations.

(c) Every insurer and producer or his or her designated agent shall furnish the required disclosure form to applicants for insurance coverage at the time of the initial insurance purchase and thereafter on any renewal when there are changes in major coverages and exclusions or changes in factors considered in cancellation, nonrenewal, and increase-in-premium situations.

(d) An insurer or producer who violates this section shall be deemed to have engaged in unfair or deceptive acts or practices prohibited by section 10-3-1104 (1) (a) (I) and shall be subject to the penalties provided in sections 10-3-1108 and 10-3-1109.

(2) In addition to the disclosure required by subsection (1) of this section, any insurer or producer offering motor vehicle coverage pursuant to this part 6 shall provide a clear explanation to the insured regarding the products purchased, the amount of coverage purchased, and the applicability of the coverage depending on the determination of fault of the insured in an automobile accident.

(3) (a) An insurer or producer offering motor vehicle coverage pursuant to this part 6 shall not automatically add optional or enhanced coverages that will result in an increased premium to an insured's policy without the express consent of the insured. Such consent may be in the same medium in which the policy is offered. The insurer or producer, for three years, shall maintain adequate evidence of the insured's consent, and such evidence shall be subject to review by the commissioner. The insurer or producer shall record:

(I) Whether optional or enhanced coverage added for an increased premium to an insured's policy was requested by the insured or was recommended by the insurer or producer and consented to by the insured; and

(II) To the extent practicable, an explanation of why such coverage was changed.

(b) For the purposes of this section, "adequate evidence" means:

(I) Written notes or other memorializations of any oral or written communication with the insured kept within the normal course of business; or

(II) A declaration page indicating which coverages are not mandatory after payment of the premium is made unless the insured disputes such coverage within a reasonable time.

(c) This section shall not apply to changes in coverages mandated by law or to amended policy forms that are changed at renewal.

(4) The disclosure form required by subsection (1) of this section shall include a disclosure specifying that:

(a) Medical payments coverage pays for reasonable health care expenses incurred for bodily injury caused by an automobile accident, regardless of fault, up to the policy limits chosen by the insured;

(b) Medical payments coverage is primary to any health insurance coverage available to an insured when injured in an automobile accident;

(c) Medical payments coverage applies to any coinsurance or deductible amount required to be paid by the person's health coverage plan, as defined in section 10-16-102 (22.5); and

(d) An insured who is injured in an automobile accident will not receive benefits from medical payments coverage for any medical expenses incurred as a result of an accident that is the fault of the insured unless medical payments coverage is purchased.

(5) The disclosure required by subsection (1) of this section shall include a disclosure of any coverages delivered or issued pursuant to section 10-4-610.

(6) (a) The commissioner may promulgate rules to address the suitability of coverages for insureds, including, but not limited to, administrative remedies against an insurer or producer for automatically adding optional or enhanced coverages that increase the insured's premium without the insured's consent, which additions may include, but are not limited to, remedies for violations of section 10-3-1104 (1) (j).

(b) The commissioner shall promulgate by rule a uniform disclosure form that reflects the requirements of this section. Such uniform disclosure form shall be used by insurers and producers in this state in order to comply with this section.

(7) Nothing in this section shall be construed to create a private right of action for damages by an insured.

(8) The disclosures required by this section shall not apply to commercial automobile insurance policies, as defined by the commissioner in rules adopted pursuant to section 10-4-641 (1).

**Source: L. 2004:** Entire section added, p. 455, § 1, effective July 1. **L. 2006:** Entire section amended, p. 38, § 4, effective January 1, 2007.

**10-4-637. No discrimination by profession.** Reimbursement for lawfully performed health care services covered by a policy providing medical payments coverage under a motor vehicle policy issued pursuant to this part 6 shall not be denied when such services are a covered benefit and rendered within the scope of practice for a licensed health care provider, a massage therapist, as defined in section 12-35.5-103, C.R.S., or an occupational therapist, as defined in section 12-40.5-103, C.R.S., performing the services.

**Source: L. 2004:** Entire section added, p. 530, § 1, effective January 1, 2005. **L. 2007:** Entire section amended, p. 2019, § 9, effective June 1. **L. 2008:** Entire section amended, p. 830, § 6, effective July 1; entire section amended, p. 1994, § 4, effective July 1. **L. 2010:** Entire section amended, (HB 10-1220), ch. 197, p. 855, § 21, effective July 1.

**Editor's note:** Amendments to this section by Senate Bill 08-152 and Senate Bill 08-219 were harmonized.

**10-4-638. Retroactive adjustment of health care service claims.** (1) Twelve months or more after the date a claim is paid for health care services performed pursuant to this part 6, an insurer may not retroactively adjust the payment of the claim.

(2) Adjustments to claims made pursuant to a policy providing for medical payments coverage in cases where a carrier has reported fraud or abuse, pursuant to section 10-1-128 (5) (a) (IV), committed by the provider shall not be subject to the requirements of subsection (1) of this section.

**Source: L. 2004:** Entire section added, p. 530, § 1, effective January 1, 2005.



**10-4-639. Claims practices for property damage.** (1) An insurer shall pay title fees, sales tax, and any other transfer or registration fee associated with the total loss of a motor vehicle.

(2) An insurer shall clearly disclose to an insured or inform a third-party claimant what benefits are provided related to towing and storage of a motor vehicle that sustains property damage and shall specifically advise an insured or third-party claimant concerning excess charges that may be incurred related to towing and storage of a motor vehicle for which the insured or third-party claimant may be responsible.

(3) An insurer shall establish a fair and consistent method for determining total loss of a motor vehicle. Such method shall include consideration of unique characteristics of the motor vehicle and a credible source of valuation. An insurer shall maintain a record of its methodology for determining total loss evaluation and provide such methodology to the commissioner upon request. The commissioner may promulgate rules for the administration and enforcement of this subsection (3). An insurer may not use different credible sources of valuation only to determine the lowest amount payable for the total loss of the motor vehicle.

(4) The commissioner shall promulgate rules concerning when payments for any applicable replacement motor vehicle shall be made by an insurer and collision waivers for third-party claimant coverage.

**Source:** L. 2004: Entire section added, p. 895, § 4, effective May 21.

**10-4-640. Operator's policy of insurance.** (1) Except as otherwise provided in subsection (8) of this section, any natural person may satisfy the requirements of section 10-4-619 by obtaining, in lieu of an owner's policy of insurance, an operator's policy of liability insurance that meets the requirements of this section and of this part 6.

(2) An operator's policy of liability insurance shall provide coverage and shall state in a conspicuous type face and font on the face of the policy, that:

(a) The insurer is only liable under the policy for liability or damages incurred by the insured while the named insured is the operator of a motor vehicle or while a motor vehicle owned by the insured is not being operated by any other person;

(b) The policy does not provide coverage for any vicarious liability imposed on the owner of the motor vehicle as a result of the operation by another person of a motor vehicle owned by the insured;

(c) The coverage provided by the policy may not meet the requirements of the mandatory motor vehicle insurance or financial responsibility laws of another state.

(3) No operator's policy of liability insurance issued pursuant to this section may be delivered or issued for delivery in this state unless the insured has signed a statement, in the same medium as the application was taken, that appears on the contract and states that the insured has read and understood the policy and its limitations.

(4) An owner of a motor vehicle that is registered or required to be registered in this state and who holds an operator's policy of liability insurance shall not permit another person to operate such motor vehicle if the owner knows or should have known that the person does not have insurance to cover such other person's operation of such motor vehicle. If a motor vehicle insured under an operator's policy of liability insurance is driven by a person who does not have in effect a complying policy as required by section 10-4-619 and such person is involved in an accident, the owner of such motor vehicle and such driver shall be liable for any liability or damages arising out of such person's use of the motor vehicle.

(5) An operator's policy of liability insurance shall not provide coverage for damages incurred while a person other than the named insured is operating a motor vehicle.

(6) An operator's policy of liability insurance may provide coverage that applies in other jurisdictions if the coverage available pursuant to this section does not meet the mandatory motor vehicle insurance or financial responsibility requirements of other jurisdictions.

(7) An operator's policy of liability insurance shall provide coverage for liability incurred by the insured while a motor vehicle owned by the insured is not being operated by any other person.

(8) This section shall not apply to a lessor, dealer, manufacturer, rebuilder, or distributor of a motor vehicle; an owner of a fleet; a common, contract, or private motor carrier; or any other individual who owns a motor vehicle for use in the individual's business.

(9) If an insurer writing policies of insurance pursuant to this part 6 offers an operator's policy of insurance, such policy shall meet the requirements of this section.

**Source: L. 2004:** Entire section added, p. 895, § 4, effective May 21.

**10-4-641. Rules - medical payments coverage.** (1) The commissioner shall promulgate any necessary rules for the administration of medical payments coverage and coordination of benefits and the implementation of section 10-4-636 (4) concerning disclosures required to be made regarding medical payments coverage and the definition of commercial automobile insurance policies for purposes of the exception allowed in section 10-4-636 (8). Medical payments coverage shall be primary to any health insurance benefit of a person injured in a motor vehicle accident, and medical payments coverage shall apply to any coinsurance or deductible amount required by the injured person's health coverage plan, as defined in section 10-16-102 (22.5).

(2) Repealed.

**Source: L. 2004:** Entire section added, p. 1340, § 1, effective May 28. **L. 2005:** (2) repealed, p. 468, § 3, effective July 1; (1) amended, p. 468, § 2, effective January 1, 2006. **L. 2006:** (1) amended, p. 40, § 5, effective January 1, 2007.

**10-4-642. Prompt payment of direct benefits - legislative declaration - definitions.** (1) The general assembly finds, determines, and declares that patients and health care providers are entitled to receive reimbursements from auto insurance entities in a timely manner. Therefore, it is in the interest of the citizens of Colorado that reasonable standards be imposed for the timely payment of claims.

(2) As used in this section, unless the context otherwise requires:

(a) "Claim" means a claim for payment of medical payments coverage benefits in accordance with the insurer's policy.

(b) "Claimant" means a policyholder, insured, or injured person entitled to medical payments benefits as a result of a motor vehicle accident or a provider with the proper assignment of benefits.

(c) "Clean claim" means:

(I) A claim where there is no additional information needed by the insurer to accept or deny the claim. A claim requiring additional information shall not be considered a clean claim and shall be paid, denied, or settled as set forth in paragraph (b) of subsection (6) of this section.

(II) A claim form that is submitted with, or after submission of, a properly executed application form for benefits currently used by the insurer by the policyholder, insured, or injured person entitled to benefits.

(3) The commissioner may, in consultation with interested parties, including health care providers, adopt a uniform application form for medical payments benefits or a uniform claim form or both a uniform application and uniform claim form. For a uniform claim form or a uniform application form having elements provided by a health care provider, the commissioner shall consider the uniform claim forms and elements adopted for health insurance pursuant to section 10-16-106.3. If the commissioner determines that new elements are required to establish that an injury or benefit requested is the result of a motor vehicle accident, the new elements may be listed in a separate uniform application form.

(4) (a) A claimant may submit a claim:

(I) By United States mail, first class, or by overnight delivery service;



(II) Electronically, if the insurer accepts claims electronically, to the location designated by the insurer;

(III) By facsimile to the location designated by the insurer; or

(IV) By hand delivery to the location designated by the insurer.

(b) (I) The provider may contact the insurer for the purpose of resubmission of a claim. The insurer shall have a separate facsimile process to receive resubmitted paper claims. A resubmitted claim shall be deemed received on the date of the facsimile transmission acknowledgment.

(II) If a claim is submitted electronically, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, on the date of the electronic verification of receipt. If a claim is submitted by facsimile, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, on the date of the facsimile transmission acknowledgment. If a claim is submitted by mail, it is presumed to have been received by the insurer or the insurer's clearinghouse, if applicable, three business days after the date of mailing. If a claim is submitted by overnight delivery service or by hand delivery, it is presumed to have been received on the date of delivery.

(c) The presumptions in paragraph (b) of this subsection (4) may be rebutted by:

(I) A date stamp on a claim showing the date of receipt. Such date shall be presumed the date of receipt.

(II) The fact that the insurer's records maintained in the ordinary course of business do not evidence receipt of a claim. In such case, the claim shall be deemed not to have been received by the insurer.

(d) An insurer shall maintain claim data that is accessible and retrievable for examination by the commissioner for the current year and for the two immediately preceding years. For each claim, an insurer shall provide a claim number, date of loss, date of auto accident, date of receipt of an application for benefits, date of receipt of a claim, date of payment of a claim, and date of denial or date the claim is closed without payment. An insurer shall detail all material activities relative to a claim. A claim file shall have all material documentation relative to a claim. Each material document within a claim file shall be noted as to date received, date processed, or date sent. Detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(5) (a) Every insurer shall provide a copy of its claim filing requirements to every insured or provider upon request within fifteen calendar days after the request is received by the insurer.

(b) Every insurer shall, within fifteen calendar days after receipt of a notification of loss, an application for benefits, or a claim, provide the necessary application or claim forms and instructions so that the claimant can comply with the policy conditions.

(6) (a) Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt by the insurer if submitted by any other means.

(b) If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. The person receiving a request for such additional information shall submit all additional information requested by the insurer within thirty calendar days after receipt of such request. The insurer may deny a claim if a provider receives a request for additional information and fails to timely submit additional information requested under this paragraph (b), subject to the resubmittal of the claim or terms of the policy. If such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within thirty days after receipt of additional information or after the applicable time period set forth in paragraph (c) of this subsection (6).

(c) Absent fraud, all claims other than clean claims shall be paid, denied, or settled within ninety calendar days after receipt by the insurer; except that the commissioner may adopt rules for the purpose of exempting an insurer from the requirement that the insurer pay, deny, or settle a claim within ninety calendar days in circumstances where the

investigation of a claim by the insurer is incomplete or otherwise needs to be continued and for extraordinary or unusual claims with extenuating circumstances as determined by the commissioner. The rules shall require the insurer, within thirty days after the receipt of a claim and every thirty days thereafter, to send to the claimant or the claimant's representative, and to the health care provider if applicable, a letter setting forth the reasons why additional time is needed. The insurer that is exempt from the ninety-day time period due to circumstances where an investigation is incomplete or otherwise needs to be continued shall pay, deny, or settle the claim within one hundred eighty days after receipt of the claim. An insurer that is exempt from the ninety-day time period shall not be exempt from payment of the interest due pursuant to subsection (7) of this section.

(d) No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial shall be in writing and given to the claimant, and the claim file shall contain documentation of the basis for the denial. The commissioner may adopt a rule regarding the time period for delivery of the denial to the claimant, which shall be the same or shorter time period than the period in which the claim was delivered.

(7) An insurer that fails to pay, deny, or settle a clean claim in accordance with paragraph (a) of subsection (6) of this section or fails to take other required action within the time periods set forth in paragraph (b) of subsection (6) of this section shall be liable for the covered benefit and, in addition, shall pay to the claimant interest at the rate of ten percent per annum for the first one hundred eighty days and at the rate of fifteen percent per annum thereafter, on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to subsection (6) of this section. Except for shorter time periods for clean claims, all interest begins to accrue ninety calendar days after receipt of the claim by the insurer.

(8) If an insurer delegates its claims processing functions to a third party, the delegation agreement shall provide that the claims processing entity shall comply with the requirements of this section. Any delegation by the insurer shall not be construed to limit the insurer's responsibility to comply with this section or any other applicable provision of this article.

(9) This section shall not apply to claims filed pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

(10) The commissioner may investigate claims against an insurer that is authorized to conduct business in this state when such claims are filed by a provider related to the improper handling or denial of benefits pursuant to this section.

(11) The commissioner may impose, after proper notice and hearing, any other penalties set forth in this title against an insurer who has a pattern and practice of violations of this section.

(12) When an insured entitled to benefits under medical payments coverage is injured or believes that he or she has been injured in an accident and is examined or treated by a health care provider, such health care provider shall notify the insurer within thirty calendar days after the insured's initial visit. This subsection (12) shall not apply to a hospital or other health facility or entity licensed or certified pursuant to section 25-1.5-103 (1), C.R.S.

**Source: L. 2004:** Entire section added, p. 1098, § 1, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-634 in Senate Bill 04-125, but has been renumbered on revision for ease of location.

#### ANNOTATION

**Admission of attorney litigation conduct as evidence in bad faith insurance claim.** There are substantial concerns about the relevancy, probative value, and prejudicial impact of evidence of attorney litigation conduct when pre-

sented as evidence of a bad faith claim. Such evidence may be admissible in some circumstances. The appropriate test must recognize the importance of those concerns in evaluating whether evidence of attorney litigation conduct



is admissible as part of a bad faith claim. *Parsons v. Allstate Ins. Co.*, 165 P.3d 809 (Colo. App. 2006).

**Test to determine admissibility of attorney litigation conduct.** Evidence of attorney litigation conduct is admissible as part of a bad faith insurance claim if the risks of unfair prejudice,

confusion of the issues, or misleading the jury, and considerations of undue delay, waste of time, or presentation of unnecessary cumulative evidence are substantially outweighed by the probative value of the evidence. *Parsons v. Allstate Ins. Co.*, 165 P.3d 809 (Colo. App. 2006).

**10-4-643. Electronic claim forms - rules.** The commissioner may promulgate rules, consistent with section 10-4-642, for an insurer to accept claim forms for medical payments coverage benefits from health care providers in electronic form. An insurer shall not prohibit the submission of a medical payments coverage benefit claim in hard-copy form, nor shall an insurer be prohibited from requiring that a claim be submitted in hard-copy form. An insurer shall not require submission of a medical payments coverage benefit claim form other than those set forth in section 10-4-642.

**Source:** L. 2004: Entire section added, p. 1098, § 1, effective July 1.

**Editor's note:** This section was originally numbered as § 10-4-635 in Senate Bill 04-125, but has been renumbered on revision for ease of location.

## PART 7

### MOTOR VEHICLE ("NO-FAULT") INSURANCE

#### 10-4-701 to 10-4-726. (Repealed)

**Editor's note:** (1) This part 7 was numbered as article 25 of chapter 13, C.R.S. 1963. For amendments to this part 7 prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 10-4-726 provided for the repeal of this part 7, effective July 1, 2003. (See L. 2002, p. 649.)

## ANNOTATION

**Insurer violated the no-fault act where it offered enhanced personal injury protection (PIP) benefits only to the named insured and family members and did not include passengers or pedestrians as required by the act.** *Cardenas v. Fin. Indem. Co.*, \_\_ P.3d \_\_ (Colo. App. 2011) (decided under law as it existed prior to 2003 repeal of § 10-4-710).

**Plaintiffs' claims accrued when they knew or should have known that the insurer would not offer more than basic PIP benefits.** Former § 10-4-710 (2)(a) required insurers to offer extended coverage that included unlimited medical

and wage loss benefits in exchange for higher premiums. A claim asserting that, contrary to that statutory mandate, an insurer did not offer extended PIP coverage to a policyholder accrued when the plaintiff knew or should have known that the insurer did not do so. *Crosby v. Am. Family Mut. Ins. Co.*, \_\_ P.3d \_\_ (Colo. App. 2010) (decided under law as it existed prior to 2003 repeal of § 10-4-710); *Rovenstine v. Am. Family Mut. Ins. Co.*, \_\_ P.3d \_\_ (Colo. App. 2010) (decided under law as it existed prior to 2003 repeal of § 10-4-710).

## PART 8

### MEDICAL LIABILITY EXTRAORDINARY LOSS FUND

#### 10-4-801 to 10-4-808. (Repealed)

**Source:** L. 91: Entire part repealed, p. 1166, § 1, effective April 11.

**Editor's note:** This part 8 was added in 1976 and was not amended prior to its repeal in 1991. For the text of this part 8 prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 9

### MEDICAL MALPRACTICE INSURANCE - JOINT UNDERWRITING ASSOCIATION

#### 10-4-901 to 10-4-913. (Repealed)

**Source: L. 2010:** Entire part repealed, (HB 10-1220), ch. 197, p. 853, § 12, effective July 1.

**Editor's note:** This part 9 was added in 1976. For amendments to this part 9 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 10

### FRAUDULENT CLAIMS AND ARSON INFORMATION REPORTING ACT

**Cross references:** For penalty provisions for arson, see part 1 of article 4 of title 18.

**10-4-1001. Short title.** This part 10 shall be known and may be cited as the "Fraudulent Claims and Arson Information Reporting Act".

**Source: L. 79:** Entire part added, p. 390, § 1, effective June 7. **L. 93:** Entire part amended, p. 393, § 3, effective July 1.

**10-4-1002. Definitions.** As used in this part 10, unless the context otherwise requires:

- (1) "Authorized agency" means:
  - (a) A fire department;
  - (b) The Colorado bureau of investigation, the office of the attorney general, and any other law enforcement agency authorized or charged with the investigation of crimes;
  - (c) Any district attorney or county attorney and their representatives; and
  - (d) Any professional licensing board or regulatory agency, including, without limitation, the division of insurance.
- (1.5) "Fraudulent insurance act" has the meaning set forth in section 10-1-128.
- (2) "Insurer" means any insurer and any person licensed or regulated under this title and Pinnacol Assurance.
- (3) "Notice" or "notify" means the notification in writing to an authorized agency by an insurer.
- (4) "Person" means every natural person, firm, partnership, association, or corporation.
- (5) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

**Source: L. 79:** Entire part added, p. 390, § 1, effective June 7. **L. 93:** Entire part amended, p. 393, § 3, effective July 1. **L. 2000:** (1) amended and (1.5) added, p. 1734, § 1, effective June 1. **L. 2002:** (2) amended, p. 1891, § 49, effective July 1. **L. 2003:** (1.5) amended, p. 617, § 13, effective July 1.



**10-4-1003. Disclosure of information.** (1) (a) When any person or insurer has reason to believe that a fire loss may have been caused by other than accidental means or that any insurance claim may be fraudulent, then such person may, and such insurer shall, notify an authorized agency.

(b) A notification pursuant to paragraph (a) of this subsection (1) shall be confidential, shall not constitute a public record under part 2 of article 72 of title 24, C.R.S., and shall not be discoverable or admissible in any civil action.

(c) No insurer or authorized agency shall intentionally refuse to release any relevant information concerning a possible nonaccidental fire loss or fraudulent insurance act, upon request, to:

(I) An insurer that is or could be required to pay a claim to which such information relates; or

(II) Any authorized agency.

(2) Any authorized agency may, in writing, require the insurer having an interest in a fire loss or other claim to release to the authorized agency specific, relevant information or evidence deemed important by the authorized agency which the insurer has in its possession and which relates to the fire loss or other claim in question. Relevant information may include, but shall not be limited to:

(a) Insurance policy information pertaining to a fire loss or other claim under investigation and any application for such a policy;

(b) Policy premium payment records;

(c) History of previous claims made by the insured; and

(d) Any other material relating to the investigation of the loss, including statements of any person who may have information about the loss and any proof of such loss.

(3) Nothing in subsection (1) of this section shall abrogate or impair the rights or powers created under subsection (2) of this section.

(4) Any authorized agency provided with relevant information or evidence pursuant to subsection (1) or (2) of this section may release such information to any other authorized agency.

(5) Any insurer providing information to an authorized agency or agencies pursuant to subsection (1) or (2) of this section may, in writing, request such agency to release to such insurer specific, relevant information or evidence relating to the fire loss or other claim under investigation. Such agency may, in its sole discretion, and with such restrictions as such agency deems appropriate, release such information to such insurer.

(6) Any authorized agency receiving a notice or other information pursuant to this part 10 may release such notice or other information to other law enforcement agencies.

(7) Any insurer providing information pursuant to subsection (1) or (2) of this section shall cooperate with any law enforcement agency of competent jurisdiction.

(8) (a) Any person that has reason to believe that a fire loss may have been caused by other than accidental means, that any insurance claim or application for insurance coverage may be fraudulent, or that a fraudulent insurance act has been committed, may, and any insurer that has reason to believe the same shall, furnish and disclose any relevant information in its possession concerning such loss, claim, or act to any insurer or authorized agency for the purpose of detecting, prosecuting, or preventing fraudulent insurance claims. Such reporting shall be confidential, shall not be a public record under article 72 of title 24, C.R.S., and shall not be discoverable or admissible under the Colorado rules of civil procedure in any civil litigation, but only to the extent that the insurer or person disclosing the information is granted immunity under section 10-4-1005. The immunity as set forth in section 10-4-1005 shall apply to any report made pursuant to this subsection (8). The commissioner of insurance may promulgate rules regarding such reporting.

(b) Paragraph (a) of this subsection (8) shall not be construed to prohibit the admission of evidence of a fraudulent insurance act:

(I) In any civil litigation involving such fraudulent insurance act; or

(II) In any civil litigation involving the alleged disclosure of information as to which the insurer or person alleged to have made such disclosure does not have immunity under section 10-4-1005.

(c) An insurer disclosing information to another insurer under this subsection (8) may make a written request to such other insurer for the release of information relating to other fire losses, insurance claims, or applications for coverage submitted by the same insured or applicant; except that such request and any such release of information shall be solely for the purpose of detecting, investigating, preventing, or prosecuting an actual or suspected fraudulent insurance act. Information so provided shall not be used for underwriting or rating purposes except in connection with an application or policy under which a fraudulent insurance act was committed. Information released pursuant to such request shall be subject to the confidentiality and immunity provisions of paragraph (a) of this subsection (8).

**Source:** L. 79: Entire part added, p. 391, § 1, effective June 7. L. 93: Entire part amended, p. 394, § 3, effective July 1. L. 94: (1) amended, p. 328, § 2, effective July 1. L. 96: (8) added, p. 289, § 4, effective July 1. L. 2000: (1) and (8) amended, p. 1734, § 2, effective June 1.

**10-4-1004. Evidence - confidential.** (1) Any authorized agency or insurer which receives any information furnished pursuant to this part 10 shall hold the information in confidence except as provided in section 10-4-1003 (4) or until such time as its release is required pursuant to a civil or criminal proceeding.

(2) Any authorized agency or its agents or employees may be required to testify in any civil or criminal proceeding in which the insurer at interest is named as a party.

**Source:** L. 79: Entire part added, p. 391, § 1, effective June 7. L. 93: Entire part amended, p. 395, § 3, effective July 1.

**10-4-1005. Immunity.** (1) In the case of actions taken under this part 10, and except where information is furnished with knowledge that the information is false or with reckless disregard for its truth or falsity, there shall be no civil penalty or damages on the part of, and no claim for relief shall be brought against, any person, insurer, or authorized agency for furnishing information or taking other action pursuant to the provisions of this part 10.

(2) Every person, insurer, and authorized agency shall be immune from civil liability when acting in good faith to cooperate with, furnish evidence to or on behalf of, provide information to, or solicit or receive information from, any of the following with regard to an actual or suspected fraudulent insurance act:

(a) An agency of the federal or any state, county, or municipal government that is involved in the detection, prosecution, or prevention of arson or insurance fraud;

(b) Any employee or agent of an agency listed in paragraph (a) of this subsection (2); and

(c) Another insurer, if acting in accordance with section 10-4-1003 (8) (c) solely for the purpose of detecting, investigating, preventing, or prosecuting an actual or suspected fraudulent insurance act. Information so provided shall not be used for underwriting or rating purposes except in connection with an application or policy under which a fraudulent insurance act was committed.

(3) Every person, insurer, and authorized agency shall be immune from civil liability when acting in good faith to comply with a court order to provide evidence or testimony with regard to an actual or suspected fraudulent insurance act; except that such immunity shall not apply to a person or insurer that has committed, or has conspired in or aided and abetted the commission of, such fraudulent insurance act.

(4) The immunity granted by this section shall be in addition to, and not in lieu of, any right, privilege, or immunity available under the common law or any other applicable statute or rule.

**Source:** L. 79: Entire part added, p. 391, § 1, effective June 7. L. 93: Entire part amended, p. 395, § 3, effective July 1. L. 94: Entire section R&RE, p. 328, § 3, effective July 1. L. 2000: Entire section amended, p. 1736, § 3, effective June 1.



**10-4-1006. Enforcement.** (1) No person, authorized agency, or insurer shall:

(a) Intentionally or knowingly refuse to release any information requested pursuant to section 10-4-1003 (2);

(b) Intentionally or knowingly fail to provide authorized agencies with relevant information pursuant to section 10-4-1003 (1); or

(c) Fail to hold in confidence information required to be held in confidence pursuant to section 10-4-1004 (1).

**Source:** L. 79: Entire part added, p. 391, § 1, effective June 7. L. 93: Entire part amended, p. 395, § 3, effective July 1.

**10-4-1007. Penalty.** Any person who violates any of the provisions of this part 10 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** L. 79: Entire part added, p. 392, § 1, effective June 7. L. 93: Entire part amended, p. 396, § 3, effective July 1. L. 2002: Entire section amended, p. 1468, § 26, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**10-4-1008. Municipal ordinances - concurrent jurisdiction - common law.**

(1) The provisions of this part 10 shall not be construed to affect, supersede, or repeal any ordinance of any municipality relating to fire prevention or control of arson.

(2) The Colorado bureau of investigation shall have investigative authority concurrent with that of county or municipal authorities when the county or municipality in which investigation of a fire loss or other claim is taking place requests the assistance of said bureau.

(3) With the exception of section 10-4-1005, the provisions of this part 10 shall not be construed to impair any existing statutory or common law rights, immunities, privileges, or powers.

**Source:** L. 79: Entire part added, p. 392, § 1, effective June 7. L. 93: Entire part amended, p. 396, § 3, effective July 1.

**10-4-1009. Continuing duties of insurers - unfair claim settlement practices.** The provisions of this part 10 shall not be construed to affect or supersede the duties of insurers and other persons pursuant to the provisions of part 11 of article 3 of this title.

**Source:** L. 93: Entire part amended, p. 396, § 3, effective July 1.

## PART 11

### COMMERCIAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION

**10-4-1101 to 10-4-1114. (Repealed)**

**Source:** L. 2010: Entire part repealed, (HB 10-1220), ch. 197, p. 853, § 13, effective July 1.

**Editor's note:** This part 11 was added in 1987. For amendments to this part 11 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 12

TRANSACTION OF BUSINESS WITH PRODUCER-CONTROLLED  
PROPERTY AND CASUALTY INSURERS

**10-4-1201. Definitions.** As used in this part 12, unless the context otherwise requires:

(1) "Accredited state" means a state in which the insurance department has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners ("NAIC").

(2) "Control" or "controlled" has the meaning set forth in section 10-3-801 (3).

(3) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

(4) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(5) "Insurance department" means the commissioner or other government official or agency of a state other than Colorado exercising powers and duties substantially equivalent to those of the commissioner or the division.

(6) "Insurer" or "licensed insurer" means any person, firm, association, or corporation duly licensed to transact a property and casualty insurance business in this state. The following are not licensed insurers for the purposes of this part 12, and this list is not exclusive:

(a) All risk retention groups as defined in the "Superfund Amendments Reauthorization Act of 1986", Pub.L. 99-499, 100 Stat. 1613 (1986), the "Risk Retention Act", 15 U.S.C. secs. 3901 et seq., and the "Model Risk Retention Act", part 14 of article 3 of this title;

(b) All residual market pools and joint underwriting authorities or associations; and

(c) All captive insurers. For the purposes of this part 12, "captive insurers" are insurance companies owned by another organization and whose exclusive purpose is to insure risks of the parent organization and affiliated companies, or, in the case of groups and associations, captive insurers are insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations, or to group members and their affiliates, or to both.

(7) "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the said person, firm, association, or corporation.

**Source: L. 92:** Entire part added, p. 1486, § 19, effective July 1.

**10-4-1202. Minimum standards.** (1) **Applicability of section.** (a) The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's annual statement filed as of December 31 of the prior year.

(b) Notwithstanding paragraph (a) of this subsection (1), the provisions of this section shall not apply if:

(I) The controlling producer:

(A) Places insurance only with the controlled insurer or only with the controlled insurer and a member or members of the controlled insurer's holding company system or with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation in connection with such insurance; and

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds;

(II) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer



controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(2) A controlled insurer shall not accept business from a controlling producer, and a controlling producer shall not place business with a controlled insurer, unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer; and the controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the controlling producer;

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis; and the due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract;

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable; and funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary state;

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer; and such records shall be retained for a period of five years commencing no later than the effective date of the last financial examination of the insurer;

(f) The contract shall not be assigned in whole or in part by the controlling producer;

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks, which standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer and to which standards, rules, procedures, rates, and conditions the controlling producer shall adhere;

(h) The rates and terms of the controlling producer's commissions, charges, or other fees and a definition of the purposes for those charges; and the rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph (h) and paragraph (g) of this subsection (2), examples of "comparable business" include, without limitation, the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph (a) of subsection (4) of this section.

(j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings, which limit may be different for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled

insurer; except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(3) **Audit committee.** Every controlled insurer shall have an audit committee of the board of directors, which committee shall be composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(4) **Reporting requirements.** (a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or such other independent loss reserve specialist acceptable to the commissioner reporting loss ratios for each line of business written and certifying to the adequacy of loss reserves established for losses incurred and outstanding as of year-end including incurred but not reported reserves on business placed by the producer.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

**Source: L. 92:** Entire part added, p. 1487, § 19, effective July 1.

**10-4-1203. Disclosure.** The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain, as part of the controlling producer's records, a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured.

**Source: L. 92:** Entire part added, p. 1490, § 19, effective July 1.

**10-4-1204. Penalties.** (1) (a) If the commissioner believes that the controlling producer or any other person has not materially complied with this part 12 or with any regulation or order promulgated pursuant thereto, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

(b) If it was found that, because of such material noncompliance, the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or for other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to part 5 of article 3 of this title, and the receiver appointed under such order believes that the controlling producer or any other person has not materially complied with this part 12 or with any regulation or order promulgated pursuant thereto and that, as a result, the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the laws of this state governing insurance.

(4) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

**Source: L. 92:** Entire part added, p. 1490, § 19, effective July 1.



**10-4-1205. Applicability.** This part 12 shall apply to licensed insurers as defined in section 10-4-1201 (6), whether domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of part 8 of article 3 of this title, to the extent they are consistent with the provisions of this part 12, shall continue to apply to all parties within holding company systems subject to this title.

**Source: L. 92:** Entire part added, p. 1491, § 19, effective July 1.

**10-4-1206. Effective date.** This part 12 shall take effect July 1, 1992. Controlled insurers and controlling producers who are not in compliance with section 10-4-1202 as of such date shall have sixty days thereafter to come into compliance with said section and shall, in addition, comply with section 10-4-1203 beginning with all policies written or renewed on or after the sixty-first day after the said date.

**Source: L. 92:** Entire part added, p. 1491, § 19, effective July 1.

### PART 13

#### BLACK LUNG DISEASE INSURANCE JOINT UNDERWRITING ASSOCIATION

**10-4-1301. Legislative declaration.** The purpose of this part 13 is to ensure the continuing availability of necessary black lung insurance in this state by establishing a temporary market for black lung insurance coverage. It is intended that the nonprofit temporary joint underwriting association created by this part 13 operate on a self-supporting basis, without subsidy from its members, to make the necessary black lung insurance available for an interim period in order to allow the voluntary market to respond or to provide additional time to the general assembly to consider appropriate remedial legislation addressing the problems of availability and high cost of black lung insurance.

**Source: L. 95:** Entire part added, p. 731, § 1, effective May 23.

**10-4-1302. Definitions.** As used in this part 13, unless the context otherwise requires:

- (1) "Association" means the joint underwriting association created pursuant to this part 13.
- (2) "Black lung insurance" means any insurance policy providing coverage to employers subject to the "Federal Coal Mine Health and Safety Act of 1969", 30 U.S.C. secs. 931 to 942, as amended.
- (3) "Board" means the board of directors of the association.

**Source: L. 95:** Entire part added, p. 731, § 1, effective May 23.

**10-4-1303. Temporary joint underwriting association.** (1) A nonprofit temporary joint underwriting association is hereby created, consisting of all insurance carriers authorized to transact business in this state, including Pinnacol Assurance, that insures employers against liability for compensation under the provisions of articles 40 to 47 of title 8, C.R.S., who shall constitute the members thereof. Every such insurer shall participate in the association as a condition of its authority to continue to make contracts of such kind of insurance in this state.

(2) The purpose of the association shall be to provide black lung insurance coverage for employers located in Colorado who are in good faith entitled to such coverage but who are unable to purchase such insurance through the voluntary market.

(3) The association shall issue policies beginning immediately; except that the association shall not commence underwriting operations until the commissioner finds that black lung insurance is not, or as of a determinable date will not be, available or cannot be made

available in the voluntary market or the cost is so unreasonably high as to make such insurance practicably unavailable.

(4) (a) The association shall, pursuant to the provisions of this part 13 and the plan of operation, have the power on behalf of its members:

- (I) To issue, or cause to be issued, policies of black lung insurance;
- (II) To underwrite such insurance;
- (III) To adjust and pay losses with respect thereto; and
- (IV) To provide or cede reinsurance.

(b) The association may contract with one or more servicing carriers or any other appropriate entity to perform any or all of the duties of the association.

**Source:** L. 95: Entire part added, p. 732, § 1, effective May 23. L. 2002: (1) amended, p. 1891, § 50, effective July 1.

**10-4-1304. Board of directors - authority.** (1) The association shall be governed by a board of six directors, to be appointed by the commissioner. Such directors shall be individuals employed full-time in the business of writing workers' compensation insurance in Colorado, at least one shall be employed by Pinnacol Assurance, at least one shall be actively engaged in operations in a small underground mine, and at least one shall be actively engaged in operations in a large underground mine. The board shall elect a chairperson from among its members.

(2) The board shall have the authority to take all lawful actions necessary to implement this part 13, including, but not limited to, issuing policies as named insurer.

**Source:** L. 95: Entire part added, p. 732, § 1, effective May 23. L. 2002: (1) amended, p. 1891, § 51, effective July 1.

**10-4-1305. Plan of operation - annual certification.** (1) (a) The board shall submit to the commissioner a proposed plan of operation consistent with the provisions of this part 13. If the board fails to do so, the commissioner shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the commissioner shall become effective and operational upon order of the commissioner.

(b) The board may change the plan of operation at any time upon the board's initiative. Adoption of the plan and any changes thereto shall require the consent of two-thirds of the members and the approval of the commissioner.

(2) The plan of operation shall provide for the prompt and efficient provision of black lung insurance and shall contain other provisions including, but not limited to:

(a) A preliminary uniform assessment of all members, based on market share as measured by workers' compensation premium in this state, for initial expenses necessary to commence operations;

- (b) The establishment of necessary facilities;
- (c) The management of the association;
- (d) A pro rata assessment of members to defray losses and expenses;
- (e) Reasonable and objective underwriting standards;
- (f) The cession of reinsurance;
- (g) Appointments of servicing carriers or other servicing arrangements, including contracts with data service organizations; except that the criteria for selecting service providers shall include, at a minimum, experience in administration of workers' compensation with particular emphasis on workers' compensation residual market mechanisms;
- (h) Procedures for determining amounts of insurance to be provided by the association;
- (i) Criteria for eligibility for coverage under the plan;
- (j) Programs to encourage insurers to provide black lung insurance coverage in the voluntary market;
- (k) Procedures for publication of renewal dates of employers insured under the plan;
- (l) Procedures for equitable distribution of applicants to the plan;



- (m) The provision of policy, claims, and loss control services to the employers insured under the plan;
- (n) Review of applications for coverage with the plan;
- (o) Procedures for auditing employers insured under the plan, which procedures shall be based on reasonable business judgment and designed to maximize the likelihood that the plan will collect the appropriate premiums;
- (p) Servicing carrier standards, commission schedules, and other provisions relating to agents who submit business to the plan;
- (q) Termination of coverage of and refusal of future coverage to an insured employer that:
  - (I) Fails to make payments when due;
  - (II) Is delinquent in payment of workers' compensation or employers' liability insurance payments or deductible payments owed to a service provider or former insurer;
  - (III) Fails to comply with any reasonable loss control programs recommended by the plan; or
  - (IV) Fails to cooperate with reasonable investigation of claims involving its employees, payroll audits, or development of loss control recommendations.
- (3) The plan shall use actuarially sound rates. The plan shall also put in place rates and rating plans for new applicants that had previously been self-insured. The plan may offer rating, dividend plans, and other means to encourage employers to participate in loss prevention programs. Rates and rating plans shall be subject to approval by the commissioner using the standards set forth in part 4 of this article.

**Source: L. 95:** Entire part added, p. 733, § 1, effective May 23.

**10-4-1306. Deficits - assessment - rebate of surplus.** (1) Whenever a deficit exists, the board shall, within ninety days, provide the commissioner with a program to eliminate the deficit within a reasonable time.

(2) Any premiums or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds in conjunction with dividend programs shall be retained by the plan for future use as necessary to ensure the continued operational viability of the plan.

(3) If the plan incurs a deficit or surplus from operations in excess of the amount required under subsection (2) of this section, as determined by the commissioner, the amount of the deficit or surplus shall be assessed or rebated to the participating insurers. Each such insurer shall pay a portion of the total assessment or receive a portion of the total rebate based on its proportion of the total voluntary Colorado workers' compensation insurance written during the calendar year in which the deficit or surplus occurs.

**Source: L. 95:** Entire part added, p. 734, § 1, effective May 23.

**10-4-1307. Annual statements.** The association shall file in the office of the commissioner annually, on or before June 1, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain an independent actuarial certification of the results of the operation of the plan and such other matters and information as are prescribed. The commissioner may prescribe the form of such statement and may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

**Source: L. 95:** Entire part added, p. 735, § 1, effective May 23.

**10-4-1308. Examinations.** (1) The commissioner shall make an examination into the affairs of the association at least annually.

(2) The evaluation shall include information on the administrative costs of operating a free-standing residual market mechanism as well as the need for rate adjustments necessary to make such mechanism entirely self-sustaining.

**Source: L. 95:** Entire part added, p. 735, § 1, effective May 23. **L. 97:** (2) amended, p. 1478, § 23, effective June 3.

**10-4-1309. Legislative declaration - authority of commissioner - emergency rules - judicial review.** (1) The general assembly finds, determines, and declares that the matters addressed in this part 13 are of the utmost urgency. Accordingly, the commissioner is authorized to, and shall, adopt emergency rules implementing this part 13 immediately. In addition, the commissioner is empowered to issue all necessary orders to implement this part 13 as soon as is practicable.

(2) To cover the commissioner's startup costs, the commissioner may assess insurers participating in the association based on each insurer's proportion of the total voluntary Colorado workers' compensation insurance written during calendar year 1994.

(3) All orders of the commissioner made pursuant to this part 13 shall be subject to judicial review by the court of appeals as provided in section 24-4-106 (11), C.R.S.; except that, notwithstanding any other provision of law, proceedings for review shall act as a stay of the enforcement of any order or decision of the insurance commissioner disapproving or ordering the withdrawal, adjustment, or termination of the effectiveness of any rate filing made by or on behalf of the association on the ground that the rates or premiums for the business of the association are unreasonable or excessive, and the association may continue to charge rates pursuant to such filing pending final order of the court.

**Source: L. 95:** Entire part added, p. 735, § 1, effective May 23.

**10-4-1310. Privileged communications.** There shall be no liability on the part of, and no civil suit for damages shall arise against, the association, the commissioner or his or her authorized representatives, or any other person or organization for any act or statement made in good faith by them during any proceedings or concerning any matters within the scope of this part 13.

**Source: L. 95:** Entire part added, p. 736, § 1, effective May 23.

**10-4-1311. Tax exemption.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

**Source: L. 95:** Entire part added, p. 736, § 1, effective May 23.

## PART 14

### EXEMPTION FROM RATE AND APPROVAL REQUIREMENTS FOR INSURERS PROVIDING COVERAGE TO EXEMPT COMMERCIAL POLICYHOLDERS

**10-4-1401. Legislative declaration.** The general assembly declares that the health, welfare, and safety of the people of the state of Colorado may not be enhanced by the regulation of insurance between sophisticated commercial entities and insurers. The general assembly finds that there are commercial entities that utilize personnel trained in risk management, insurance coverage issues, and insurance industry knowledge who are capable of negotiating and entering into insurance coverage agreements without the need for state regulation in this area. Therefore, the purpose of this part 14 is to exempt insurers



negotiating with and insuring sophisticated commercial entities from rate filing and form certification requirements. This exemption will allow competitive underwriting and rating of policies.

**Source: L. 99:** Entire part added, p. 384, § 1, effective January 15, 2000.

**10-4-1402. Rules.** (1) (a) The commissioner shall promulgate rules necessary for the implementation and administration of this article. Such rules shall include, without limitation, the definition of what organizations and entities qualify as exempt commercial policyholders. Such definition shall require such organizations to be those purchasing type II kinds of insurance as specified in section 10-4-401 (3) (b), except the commissioner shall not include purchasers of title insurance within the definition of an exempt commercial policyholder. For purposes of promulgating such rules, the commissioner shall consider recommendations from risk management professionals, insurer representatives, producers, buyers, qualified insurance consultants, consumers of insurance products, and any other persons as necessary.

(b) (I) For the purposes of promulgating the definition of an exempt commercial policyholder, the commissioner shall mandate that an exempt commercial policyholder procure its insurance through use of a risk manager employed or retained by the exempt commercial policyholder. The qualifications of the risk manager shall be defined by the division of insurance pursuant to this section.

(II) The commissioner shall define all other criteria of an exempt commercial policyholder which criteria shall include but are not limited to the following, and each exempt commercial policyholder shall meet at least one of such criteria:

(A) The minimum amount for aggregate insurance premium sales for the exempt commercial policyholder;

(B) The minimum net worth of the exempt commercial policyholder;

(C) The minimum dollar amount for annual net revenues or sales for the exempt commercial policyholder;

(D) The minimum number of employees of the exempt commercial policyholder per individual insured, or, if the exempt commercial policyholder is a member of an affiliated group, the minimum number of employees in the employing group;

(E) A not-for-profit or public entity's minimum annual budget or assets; or

(F) A municipality's minimum population.

(2) The definition of an exempt commercial policyholder shall be reviewed periodically by the commissioner with the recommendations from risk management professionals, insurer representatives, producers, buyers, qualified insurance consultants, consumers of insurance products, and any other person as the commissioner deems necessary.

(3) The commissioner shall promulgate rules that define the disclosure requirements for insurance policies issued to exempt commercial policyholders. Each insurance policy issued to an exempt commercial policyholder shall contain a conspicuous disclaimer printed in at least ten-point, bold-faced type that states that the policy is exempt from the rate filing and approval and the form filing and certification requirements of the division of insurance.

(4) The division shall determine by rule the type of data, documents, reports, rate and form information, and any other information the commissioner determines necessary, to be collected from an insurer providing coverage to an exempt commercial policyholder when the division has received a complaint that an insurer is anticompetitive or not adequately servicing the needs of the exempt commercial policyholder.

(5) Rules promulgated under this section shall be promulgated in accordance with article 4 of title 24, C.R.S., and initially completed by January 15, 2000.

**Source: L. 99:** Entire part added, p. 384, § 1, effective January 15, 2000.

**10-4-1403. Exemption from rate filing, approval, and form certification requirements.** (1) The requirements of sections 10-4-107, 10-4-108, 10-4-109, 10-4-109.5,

10-4-109.7, 10-4-110, 10-4-113, 10-4-403, 10-4-404, 10-4-404.5, 10-4-414, 10-4-419, and 10-4-421 shall not apply to insurers of exempt commercial policyholders.

(2) If the commissioner determines, after providing an opportunity for comment and a public hearing, that a line of insurance is anticompetitive, as described in section 10-4-415, or is not being adequately serviced by insurers, the commissioner may require that the rate for that particular line of insurance be filed pursuant to section 10-4-401 and enforced under section 10-4-418.

(3) The commissioner shall review annually any line of insurance found previously to be anticompetitive, as described in section 10-4-415, to determine whether rate filing and approval requirements may again be eliminated because the line has subsequently become competitive. Such review shall include the opportunity for comment and a public hearing.

**Source: L. 99:** Entire part added, p. 386, § 1, effective January 15, 2000.

**10-4-1404. Multistate insurance risks - choice of law.** Where the exempt commercial policyholder operates in more than one state, the policy may include provisions within the insurance contract that determine disputes arising from claims handling and procedures, cancellation of the policy, or nonrenewal of the policy, which disputes shall be governed by the state with the largest percentage of premiums charged under the policy.

**Source: L. 99:** Entire part added, p. 386, § 1, effective January 15, 2000.

## PART 15

### PORTABLE ELECTRONICS INSURANCE

**10-4-1501. Definitions.** As used in this part 15, unless the context otherwise requires:

- (1) "Customer" means a person who purchases portable electronics or services.
- (2) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.
- (3) "Insurer" means any admitted company or authorized company, as defined in section 10-1-102 (3), approved to transact insurance in this state.
- (4) "Location" means any physical location in this state or any web site, call center site, or similar location directed to residents of this state.
- (5) "Portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, wireless devices, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories, and service related to the use of such devices.
- (6) (a) "Portable electronics insurance" means insurance that provides coverage for the repair or replacement of portable electronics that may provide coverage for portable electronics against any one or more of the following causes of loss:
  - (I) Loss;
  - (II) Theft;
  - (III) Inoperability due to mechanical failure or malfunction;
  - (IV) Damage; or
  - (V) Other similar causes of loss.
- (b) "Portable electronics insurance" does not include:
  - (I) A service contract or extended warranty that provides coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear;
  - (II) A service contract that is in effect as of the effective date of this part 15 that provides coverage for the loss of portable electronics associated with an ongoing service



relationship between a vendor and a consumer or that is otherwise regulated pursuant to rules promulgated by the commissioner;

(III) A policy of insurance covering a seller's or manufacturer's obligations under a warranty; or

(IV) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

(7) "Portable electronics transaction" means:

(a) The sale or lease of portable electronics by a vendor to a customer; or

(b) The sale of a service related to the use of portable electronics by a vendor to a customer.

(8) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by an insurer to supervise the administration of a portable electronics insurance program.

(9) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 67, § 1, effective January 1, 2013.

**10-4-1502. Licensure of vendors.** (1) A vendor shall hold a limited lines producer license issued by the division in accordance with part 4 of article 2 of this title in order to sell or offer coverage under a policy of portable electronics insurance.

(2) A limited lines producer license issued for the purposes of this part 15 authorizes an employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner and with ten days' notice to the supervising entity, the supervising entity shall make the registry open to inspection and examination by the commissioner during regular business hours of the supervising entity.

(4) Notwithstanding any other provision of law, a license issued pursuant to this part 15 authorizes the licensee and its employees or authorized representatives to engage in those activities that are permitted in this part 15.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 69, § 1, effective January 1, 2013.

**10-4-1503. Requirements for sale of portable electronics insurance.** (1) At every location where portable electronics insurance is offered to customers, the vendor shall make brochures or other written materials available to a prospective customer that:

(a) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(b) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(c) Summarize the material terms of the insurance coverage, including:

(I) The identity of the insurer;

(II) The identity of the supervising entity;

(III) The amount of any applicable deductible and how it is to be paid;

(IV) Benefits of the coverage; and

(V) Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(d) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time, and that the person paying the premium will receive a refund of any applicable unearned premium.

(2) An insurer may offer portable electronics insurance on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(3) A policy of insurance provides primary coverage in the event of a covered loss under more than one policy.

(4) Each insurer shall establish eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 69, § 1, effective January 1, 2013.

**10-4-1504. Authority of vendors of portable electronics.** (1) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and are not subject to licensure as an insurance producer under this title if:

(a) The vendor obtains a limited lines producer license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to this section;

(b) The insurer issuing the portable electronics insurance either directly supervises, authorizes, or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The supervising entity shall include the following in the training program, which must include employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance:

(I) A supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity if the training program is provided in electronic format; and

(II) Instruction to each employee or authorized representative about the portable electronics insurance offered to customers and the disclosures required under section 10-4-1503; and

(c) The employee or authorized representative of a vendor does not advertise, represent, or otherwise hold himself or herself out as a nonlimited lines licensed insurance producer.

(2) Notwithstanding any other provision of law, a vendor shall not compensate employees or authorized representatives of a vendor based primarily on the number of customers enrolled for portable electronics insurance coverage, but the vendor may compensate employees or authorized representatives for activities under the limited lines license as long as the compensation is incidental to the employee's or authorized representative's overall compensation.

(3) A vendor may bill and collect charges for portable electronics insurance coverage. A vendor shall separately itemize any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics and any related services. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting the charges are not required to maintain the charges in a segregated account if the vendor is authorized by the insurer to hold the charges in an alternative manner and remits the charges



to the supervising entity within sixty days after receipt. All charges received by a vendor from an enrolled customer for the sale of portable electronics insurance are held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 70, § 1, effective January 1, 2013.

**10-4-1505. Suspension or revocation of license.** (1) If a vendor of portable electronics or its employee or authorized representative violates this part 15, the commissioner may take disciplinary action against the vendor in accordance with part 8 of article 2 of this title. A fine imposed as disciplinary action shall not exceed five thousand dollars in the aggregate for multiple violations arising from the same or similar conduct.

(2) In addition to other penalties authorized by part 8 of article 2 of this title, the commissioner may:

(a) Suspend the privilege of transacting portable electronics insurance pursuant to this part 15 at specific business locations where violations have occurred; and

(b) Suspend or revoke the ability of individual employees or authorized representatives to act under the license.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 71, § 1, effective January 1, 2013.

**10-4-1506. Termination of portable electronics insurance.** (1) Notwithstanding any other provision of law:

(a) (I) Except as specified in subparagraphs (II) and (III) of this paragraph (a), an insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor and enrolled customers with at least thirty days' notice.

(II) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen days' notice for nonpayment of premium or for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

(III) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(A) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(B) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty calendar days after exhaustion of the limit. If notice is not timely sent, enrollment continues notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(b) If the insurer changes the terms and conditions, then the insurer shall provide the vendor with a revised policy or endorsement and shall provide each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred and a summary of the material changes;

(c) When a vendor terminates a portable electronics insurance policy, the vendor shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The insurer shall mail or deliver written notice to the enrolled customer at least thirty days before the termination.

(d) (I) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this part 15 or is otherwise required by law, the

insurer, vendor, or other person shall send it in writing within the notice period, if any, specified within the statute or rule requiring the notice or correspondence. Notwithstanding any other provision of law, an insurer, vendor, or other person may send notices and correspondence by either mail or electronic means.

(II) If the notice or correspondence is mailed, the insurer shall send it to the vendor at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last-known mailing addresses on file with the insurer. The insurer or vendor shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service.

(III) If the notice or correspondence is sent by electronic means, the insurer shall send it to the vendor at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last-known electronic mail addresses as provided by each enrolled customer to the insurer or vendor. The insurer or vendor shall maintain proof that the notice or correspondence was sent.

(IV) For purposes of this paragraph (d), an enrolled customer's provision of an electronic mail address to the insurer or vendor is consent to receive notices and correspondence by electronic means.

(e) The supervising entity appointed by the insurer may send notice or correspondence required by this section or otherwise required by law on behalf of an insurer or vendor.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 72, § 1, effective January 1, 2013.

**10-4-1507. Application for license - fees.** (1) An applicant for a license under this part 15 shall apply for a license in accordance with section 10-2-404; except that, in lieu of providing information for all officers, partners, and directors as required by section 10-2-404 (2), the required information to be submitted for a license pursuant to this part 15 is limited to the information pertaining to an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with this part 15. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the vendor shall provide the location of the home office, name, residence address, and other information required by the commissioner for all officers, directors, and shareholders of record having beneficial ownership of ten percent or more of any class of securities registered under the federal securities laws.

(2) For purposes of complying with section 10-2-404 (2) (d), the licensed producer designated by an applicant is not required to be an officer, partner, employee, or director of the applicant.

(3) An applicant for a license pursuant to this part 15 is exempt from the requirements of sections 10-2-404 (2) (f) and 10-2-406.

(4) Any vendor engaging in portable electronics insurance transactions on or before January 1, 2013, shall apply for licensure within ninety days after January 1, 2013. Any applicant commencing operations after January 1, 2013, shall obtain a license before offering portable electronics insurance.

**Editor's note:** This section is effective January 1, 2013.

**Source: L. 2012:** Entire part added, (HB 12-1071), ch. 25, p. 73, § 1, effective January 1, 2013.

## NONADMITTED INSURANCE

### ARTICLE 5

#### Nonadmitted Insurance

**Cross references:** For additional provisions concerning surplus line insurance, see article 2 of this title.



10-5-101.	Short title.	10-5-110.	Statement - rules.
10-5-101.1.	Legislative declaration.	10-5-111.	Tax on premiums.
10-5-101.2.	Definitions.	10-5-111.5.	Allocation of premium tax.
10-5-101.5.	Exemptions.	10-5-112.	Penalty for failure to comply.
10-5-102.	Validity of certain contracts.	10-5-113.	Revocation of broker's license.
10-5-103.	Conditions for export.	10-5-114.	Actions against insurer - service.
10-5-103.5.	Producing broker's affidavit.	10-5-115.	Authority of commissioner - assistance of brokers' association.
10-5-104.	Endorsement of contract.	10-5-116.	Records produced on order.
10-5-105.	Surplus line insurance valid.	10-5-117.	Rules and regulations.
10-5-106.	When export declared eligible.	10-5-118.	Notice provisions not applicable to surplus lines.
10-5-107.	Brokers may accept business from producers.	10-5-119.	Disclosures regarding claims-made policies by surplus line brokers or insurers.
10-5-108.	Placement of surplus lines insurance.		
10-5-109.	Records of surplus line broker.		

**10-5-101. Short title.** This article shall be known and may be cited as the “Nonadmitted Insurance Act”.

**Source:** L. 49: p. 474, § 22. CSA: C. 87, § 334. CRS 53: § 72-14-17. C.R.S. 1963: § 72-13-17. L. 95: Entire section amended, p. 491, § 6, effective May 16.

**10-5-101.1. Legislative declaration.** (1) The general assembly finds and declares that property and casualty insurance transactions with nonadmitted insurers are so affected with a public interest as to require regulation, taxation, supervision, and control of such transactions and matters relating thereto, as provided in this article, in order to:

(a) Protect the insureds and claimants of this state in transactions involving the purchase of insurance from insurers not authorized to transact business in this state;

(b) Provide for the public, except for transactions related to the diligent effort requirements of this article for exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section, to the extent that insurance is not procurable from admitted insurers, orderly, reasonable, and regulated access to such insurance from eligible nonadmitted insurers through qualified, licensed, and supervised surplus line agents and brokers;

(c) Protect the revenues of this state;

(d) Protect regulated, admitted insurers from unregulated and unfair competition by nonadmitted insurers;

(e) Regulate and supervise the effectuation of surplus lines insurance in accordance with the laws of this state and federal law, including the federal “McCarran-Ferguson Act”; and

(f) Maintain reliable insurance markets.

**Source:** L. 81: Entire section added, p. 537, § 1, effective January 1, 1982. L. 95: IP(1), (1)(b), and (1)(e) amended, p. 491, § 7, effective May 16. L. 99: (1)(b) amended, p. 388, § 9, effective January 15, 2000. L. 2012: (1)(b) amended, (HB 12-1215), ch. 104, p. 355, § 9, effective August 8.

**Cross references:** For the McCarran-Ferguson Act, see 59 Stat. 33, 15 U.S.C. §§ 1011 to 1015.

**10-5-101.2. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(2) “Affiliated group” means any group of entities that are all affiliated.

(3) “Broker” means a surplus lines producer duly licensed to export insurance under this article.

(4) “Control” means that an entity has control over another entity if the controlling entity:

(a) Directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the controlled entity; or

(b) Controls in any manner the election of a majority of the directors or trustees of the controlled entity.

(5) “Export” means to place with an insurer under this article insurance covering an insured whose home state is Colorado.

(6) “Federal act” means the “Nonadmitted and Reinsurance Reform Act of 2010”, 15 U.S.C. sec. 8201 et seq., as amended.

(7) (a) Except as provided in paragraph (b) of this subsection (7), “home state” means, with respect to an insured:

(I) The state in which the insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(II) If one hundred percent of the insured risk is located out of the state referred to in subparagraph (I) of this paragraph (a), the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(b) With respect to affiliated groups, if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, “home state” means the home state, as determined pursuant to paragraph (a) of this subsection (7), of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(8) “Independently procured insurance” means insurance procured directly by a person from a nonadmitted insurer.

(9) “Multistate risk” means a risk covered by a nonadmitted insurer with insured exposures in more than one state.

(10) “Nonadmitted insurance” means any property or casualty insurance permitted in a state to be placed directly or through a broker with a nonadmitted insurer eligible to accept such insurance. “Nonadmitted insurance” includes independently procured insurance and surplus lines insurance.

(11) “Nonadmitted insurers” means insurers not having a certificate of authority to transact business in this state.

(12) “Person” has the same meaning as set forth in section 2-4-401, C.R.S.

(13) “Surplus lines insurance” means coverage placed with an eligible nonadmitted insurer as provided by section 10-5-108.

**Source: L. 81:** Entire section added, p. 538, § 1, effective January 1, 1982. **L. 95:** (1) and (2) amended and (4) added, p. 491, § 8, effective May 16. **L. 2012:** Entire section amended, (HB 12-1215), ch. 104, p. 350, § 1, effective August 8.

**10-5-101.5. Exemptions.** (1) The provisions of this article controlling the placing of insurance with nonadmitted insurers shall not apply to reinsurance or, except as to subsection (2) of this section, to the following types of insurance when placed by licensed agents or brokers of this state:

(a) Insurance on vessels or crafts or their hulls or cargoes or on marine builders’ risks or marine protection and indemnity or other risks, including strikes and war risks commonly insured under ocean or wet marine forms of policy;

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(c) Insurance on the operations of railroads engaged in transportation in interstate commerce and their property used in such operations;

(d) Insurance on aircraft owned or operated by manufacturers of aircraft or on aircraft operated in commercial scheduled interstate flight or the cargo of such aircraft or against liability, other than workers’ compensation and employers’ liability, arising out of the ownership, maintenance, or use of such aircraft;



(e) Insurance on satellites or other devices intended for launch beyond the earth's atmosphere.

(2) Brokers placing any insurance referred to in subsection (1) of this section shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this article. The record shall be preserved for not less than three years after the effective date of the insurance; shall be kept in the broker's office and open to the commissioner's examination and on forms designated and furnished by the commissioner; and shall contain a report of all such coverages so placed in a designated calendar year.

**Source:** L. 81: Entire section added, p. 538, § 1, effective January 1, 1982. L. 2005: Entire section amended, p. 735, § 1, effective January 1, 2006.

**10-5-102. Validity of certain contracts.** A contract of insurance effectuated by a nonadmitted insurer in violation of the provisions of this article shall be voidable except at the instance of the insurer.

**Source:** L. 49: p. 467, § 1. CSA: C. 87, § 318. CRS 53: § 72-14-1. C.R.S. 1963: § 72-13-1. L. 95: Entire section amended, p. 492, § 9, effective May 16.

**10-5-103. Conditions for export.** (1) If certain insurance coverages cannot be procured from admitted insurers, such coverages, designated in this article as "surplus lines", may be procured from nonadmitted insurers, subject to the following conditions:

(a) The insurance must be procured through a licensed broker.

(b) The full amount of insurance required shall not be procurable, after diligent effort has been made to do so, from among admitted insurers authorized to transact and actually transacting that kind of insurance in this state; and placing the insurance with a nonadmitted insurer shall not be for the purpose of securing a lower premium rate than that which would be accepted by an admitted insurer unless the premium rate quoted by the admitted insurer is more than ten percent higher than that quoted by the nonadmitted insurer.

(c) At the time of the procuring of any such insurance, an affidavit setting forth facts referred to in paragraph (b) of this subsection (1) must be executed by the broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. In lieu thereof, the commissioner may provide for simplified monthly reporting of coverages procured pursuant to this article.

(2) The diligent effort requirements of this section shall not apply to transactions with exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 49: p. 467, § 2. CSA: C. 87, § 319. CRS 53: § 72-14-2. C.R.S. 1963: § 72-13-2. L. 81: Entire section R&RE, p. 538, § 2, effective January 1, 1982. L. 95: IP(1) and (1)(b) amended, p. 492, § 10, effective May 16. L. 99: (2) added, p. 388, § 10, effective January 15, 2000.

**10-5-103.5. Producing broker's affidavit.** Any broker exporting insurance under this article, at the request of any other licensed agent or broker, may accept an affidavit executed by such other agent or broker, in such form as may be prescribed or accepted by the commissioner, as evidence that such insurance was eligible for export under section 10-5-103. Except as the commissioner may otherwise provide, the broker shall file or cause to be filed such affidavit with the commissioner within thirty days after the insurance was so procured.

**Source:** L. 81: Entire section added, p. 539, § 3, effective January 1, 1982.

**10-5-104. Endorsement of contract.** Every insurance contract procured and delivered as a surplus line coverage pursuant to this article shall be initialed by or bear the name of the surplus line broker who procured it and shall have stamped upon it the following: "This

contract is delivered as a surplus line coverage under the 'Nonadmitted Insurance Act'. The insurer issuing this contract is not licensed in Colorado but is an eligible nonadmitted insurer. There is no protection under the provisions of the 'Colorado Insurance Guaranty Association Act'."

**Source:** L. 49: p. 468, § 3. CSA: C. 87, § 320. CRS 53: § 72-14-3. C.R.S. 1963: § 72-13-3. L. 95: Entire section amended, p. 492, § 11, effective May 16. L. 2012: Entire section amended, (HB 12-1215), ch. 104, p. 355, § 10, effective August 8.

**10-5-105. Surplus line insurance valid.** Insurance contracts procured as surplus line coverage from nonadmitted insurers in accordance with this article shall be fully valid and enforceable as to all parties and shall be given recognition in all matters and respects to the same effect as like contracts issued by admitted insurers.

**Source:** L. 49: p. 468, § 4. CSA: C. 87, § 321. CRS 53: § 72-14-4. C.R.S. 1963: § 72-13-4. L. 95: Entire section amended, p. 492, § 12, effective May 16.

**10-5-106. When export declared eligible.** The commissioner may, by rule, declare eligible for export generally, notwithstanding the provisions of section 10-5-103 (1) (b) and (1) (c), any class of insurance coverage or risk for which the commissioner finds that there is no reasonable or adequate market among insurers licensed in this state. For the purposes of this section, the diligent effort requirements of this article shall not apply to transactions with exempt commercial policyholders, as defined pursuant to section 10-4-1402 and rules adopted by the commissioner pursuant to that section.

**Source:** L. 49: p. 468, § 5. CSA: C. 87, § 322. CRS 53: § 72-14-5. C.R.S. 1963: § 72-13-5. L. 77: Entire section repealed, p. 506, § 7, effective January 1, 1978. L. 81: Entire section RC&RE, p. 539, § 4, effective January 1, 1982. L. 92: Entire section amended, p. 1491, § 20, effective July 1. L. 99: Entire section amended, p. 388, § 11, effective January 15, 2000.

**10-5-107. Brokers may accept business from producers.** A licensed surplus line broker may accept and place surplus line business for any insurance producer licensed in this state for the kind of insurance involved and may compensate such agent or broker therefor.

**Source:** L. 49: p. 468, § 6. CSA: C. 87, § 323. CRS 53: § 72-14-6. C.R.S. 1963: § 72-13-6. L. 2001: Entire section amended, p. 1213, § 38, effective January 1, 2002.

**10-5-108. Placement of surplus lines insurance.** (1) A broker shall not place any coverage with a nonadmitted insurer unless, at the time of placement, the nonadmitted insurer meets all applicable eligibility requirements contained in the federal act or is an insurance exchange, Lloyds plan, or group of incorporated insurers under common administration that has been approved by the commissioner and is included on the list of eligible nonadmitted insurers prepared by the commissioner at least annually. To be placed on the eligible list, the nonadmitted insurer shall:

(a) Submit a current year's application, fees as prescribed by sections 10-3-207 and 24-31-104.5, C.R.S., and other information required by the commissioner. In the case of an insurance exchange, the nonadmitted insurer shall submit an aggregate combined annual statement of all underwriting syndicates operating during the period reported, in addition to individual annual statements for each syndicate.

(b) (I) In the case of a foreign insurer, meet all applicable eligibility requirements contained in the federal act. The commissioner may approve an insurer with less than the required minimum requirements upon an affirmative finding of acceptability by the commissioner. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income



trends, market availability, and company record and reputation within the industry. The commissioner shall not make an affirmative finding of acceptability when the insurer's capital and surplus is less than four million five hundred thousand dollars.

(II) In the case of an "insurance exchange" created by the laws of a state other than this state, the syndicates of the exchange shall have and maintain, under terms acceptable to the commissioner, capital and surplus of not less than seventy-five million dollars in the aggregate. The insurance exchange shall maintain, under terms acceptable to the commissioner, not less than fifty percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate. In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from this state shall meet either of the following requirements:

(A) For insurance exchanges that maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall have and maintain, under terms acceptable to the commissioner, minimum capital and surplus of not less than five million dollars; or

(B) For insurance exchanges that do not maintain funds in an amount of not less than fifteen million dollars for the protection of all exchange policyholders, the syndicate shall maintain, under terms acceptable to the commissioner, minimum capital and surplus of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or fifteen million dollars, whichever is greater.

(c) (I) In the case of an alien insurer, as defined in section 10-3-301 (1), maintain status on the current national association of insurance commissioners' international insurers department listing;

(II) In the case of a Lloyd's plan or other similar unincorporated group of individual insurers, or a combination of both unincorporated and incorporated insurers, such alien insurer shall have and maintain a trust fund in the United States, in an amount of not less than one hundred million dollars, which trust fund shall be available for the benefit of United States surplus lines policyholders of any member of the group. The group shall, in addition, maintain in the United States a trust fund or trust funds in an amount satisfactory to the commissioner that is not less than the amount required by the law of the state where the trust fund or trust funds are located. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution and shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state, and the trust instrument representing the surplus portion of the trust deposit shall satisfy the requirements of the standard trust agreement required for listing with the national association of insurance commissioners' international insurers department.

(III) In the case of a group of incorporated insurers under common administration that has continuously transacted an insurance business outside the United States for at least three years immediately before May 16, 1995, and that submits to this state's authority to examine its books and records and bears the expense of the examination, have and maintain an aggregate policyholders' surplus of ten billion dollars and have and maintain in trust a surplus in the amount of one hundred million dollars, all of which surplus funds shall be available for the benefit of United States surplus lines policyholders of any member of the group. Each insurer shall individually maintain capital and surplus of not less than twenty-five million dollars per company. The trust funds shall satisfy the requirements of the standard trust agreement requirement for listing with the national association of insurance commissioners' international insurers department, shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, and shall consist of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state. Additionally, each

member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(d) (Deleted by amendment, L. 95, p. 493, § 13, effective May 16, 1995.)

(2) A surplus line broker who places insurance with a nonadmitted insurance company that does not comply with this article is subject to a penalty of up to ten thousand dollars as determined by the commissioner and the surplus line broker's license may be revoked.

**Source:** L. 49: p. 469, § 7. CSA: C. 87, § 324. CRS 53: § 72-14-7. C.R.S. 1963: § 72-13-7. L. 71: p. 725, § 1. L. 73: p. 856, § 1. L. 75: (1) R&RE, p. 342, § 1, effective July 1. L. 81: (1) amended, p. 539, § 5, effective January 1, 1982. L. 91: (1) amended, p. 1232, § 6, effective June 5. L. 92: (1) amended, p. 1492, § 21, effective July 1. L. 93: (1)(c) amended, p. 485, § 2, effective April 26. L. 95: Entire section amended, p. 493, § 13, effective May 16. L. 98: (1)(c)(II) amended, p. 227, § 1, effective April 10. L. 2010: (1)(a) amended, (HB 10-1385), ch. 204, p. 883, § 4, effective May 5. L. 2012: (1)(a) amended, (SB 12-110), ch. 158, p. 561, § 6, effective July 1; IP(1), (1)(a), IP(1)(b), (1)(b)(I), (1)(c)(I), and (2) amended, (HB 12-1215), ch. 104, p. 351, § 2, effective August 8.

**Editor's note:** Amendments to subsection (1)(a) by House Bill 12-1215 and Senate Bill 12-110 were harmonized.

**10-5-109. Records of surplus line broker.** Each licensed surplus line broker shall keep in the broker's office a full and true record of each surplus line contract procured by the broker, including a copy of the daily report, if any, showing such of the following items as may be applicable: Amount of the insurance; gross premiums charged; return premium paid, if any; rate of premium charged upon the several items of property; effective date of the contract and the terms thereof; name and address of the insurer; name and address of the insured; brief general description of property insured and where located; other information as may be required by the commissioner. The record shall at all times be open to examination by the commissioner.

**Source:** L. 49: p. 469, § 8. CSA: C. 87, § 325. CRS 53: § 72-14-8. C.R.S. 1963: § 72-13-8. L. 2001: Entire section amended, p. 1213, § 39, effective January 1, 2002.

**10-5-110. Statement - rules.** (1) Each surplus line broker and every person that enters into an independent procurement for nonadmitted insurance shall file with the commissioner a verified statement of all insurance transacted by the broker or other person during the preceding reporting period. The commissioner shall, by rule, determine the reporting period.

(2) The statement must be on forms as prescribed and furnished by the commissioner, and must show: Gross amount of each kind of insurance transacted, aggregate gross premiums charged, aggregate of returned premiums paid to insureds, aggregate of net premiums, and additional information as required by the commissioner.

**Source:** L. 49: p. 469, § 9. CSA: C. 87, § 326. CRS 53: § 72-14-9. C.R.S. 1963: § 72-13-9. L. 2012: Entire section amended, (HB 12-1215), ch. 104, p. 353, § 3, effective August 8.

**10-5-111. Tax on premiums.** (1) Each surplus line broker and every person that enters into an independent procurement for nonadmitted insurance shall remit to the division of insurance a tax on the net premiums, exclusive of sums collected to cover federal and other state taxes and examination fees, on nonadmitted insurance subject to tax under this article during the preceding reporting period as shown by the statement filed with the commissioner. The net premiums must be taxed at the rates described in section 10-5-111.5.



(2) If a surplus line policy or independently procured policy covers an insured whose home state is Colorado, and that policy covers risks or exposures located outside of Colorado, the tax payable is computed using the allocation method contained in section 10-5-111.5.

**Source:** L. 49: p. 470, § 10. CSA: C. 87, § 327. CRS 53: § 72-14-10. C.R.S. 1963: § 72-13-10. L. 92: (1) amended, p. 1761, § 2, effective February 28. L. 2012: Entire section amended, (HB 12-1215), ch. 104, p. 353, § 4, effective August 8.

**Cross references:** For additional taxes required by this article, see § 10-3-209.

**10-5-111.5. Allocation of premium tax.** (1) In determining the amount of tax payable to Colorado, the entire amount of tax payable at a rate of three percent on the net premiums is presumed to be owed to Colorado; except that, for those multistate risks involving states that have entered into either a compact or a tax-sharing agreement with Colorado to share the tax, the premium tax rate and the amounts allocated to the other states are subject to determination according to the terms of the compact or agreement.

(2) The commissioner may participate in tax-sharing agreements to collect and disburse funds in accordance with subsection (1) of this section, if the purposes of the tax-sharing agreement are limited to:

(a) Facilitating the payment and allocation of premium taxes on nonadmitted insurance for multistate risks among states participating in the agreement;

(b) Adopting uniform requirements, forms, and procedures that facilitate the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance for multistate risks;

(c) Coordinating the reporting of premium taxes and transaction data of multistate risks among the states participating in the agreement; and

(d) Establishing a mechanism to facilitate the receipt and distribution of premium taxes and transaction data related to nonadmitted insurance of multistate risks.

**Source:** L. 2012: Entire section amended, (HB 12-1215), ch. 104, p. 353, § 5, effective August 8.

**10-5-112. Penalty for failure to comply.** If any surplus line broker fails to file the annual statement, or fails to remit the tax provided by section 10-5-111, prior to the first day of April after the tax is due, the broker shall be liable for a fine of twenty-five dollars for each day of delinquency commencing with the first day of April. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.

**Source:** L. 49: p. 470, § 11. CSA: C. 87, § 328. CRS 53: § 72-14-11. C.R.S. 1963: § 72-13-11. L. 2005: Entire section amended, p. 736, § 2, effective January 1, 2006.

**10-5-113. Revocation of broker's license.** (1) The commissioner may revoke any surplus line broker's license:

(a) If the broker fails to file the annual statement or to remit the tax as required by this article; or

(b) If the broker fails to keep the records, or to allow the commissioner to examine the broker's records as required by this article; or

(c) For any of the causes for which a general broker's license may be revoked.

(2) The commissioner may suspend or revoke any such license whenever the commissioner deems suspension or revocation to be for the best interest of the people of this state.

(3) The procedures provided by law for the suspension or revocation of general brokers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) No broker whose license has been so revoked or suspended shall again be so licensed within one year thereafter or until any fines or delinquent taxes owing by the broker have been paid.

**Source:** L. 49: p. 470, § 12. CSA: C. 87, § 329. CRS 53: § 72-14-12. C.R.S. 1963: § 72-13-12. L. 95: IP(1) amended, p. 496, § 14, effective May 16. L. 2001: (1)(b) amended, p. 1213, § 40, effective January 1, 2002. L. 2005: (1)(a), (2), and (4) amended, p. 736, § 3, effective January 1, 2006.

**Cross references:** For limitation on revocation of licenses, see article 4 of title 24; for the procedure for revocation of broker's license, see part 8 of article 2 of this title.

**10-5-114. Actions against insurer - service.** (1) A nonadmitted insurer may be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this article, in the district court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the commissioner. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the person designated by the insurer pursuant to rule of the commissioner for the purpose by prepaid certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) A nonadmitted insurer issuing such policy shall be deemed thereby to have authorized service of process against it, in the manner and to the effect as provided in this section, and to have appointed the commissioner as its agent for service of process issuing upon any cause of action arising in this state under any such policy. Any such policy shall contain a provision stating the substance of this section and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section.

**Source:** L. 49: p. 471, § 13. CSA: C. 87, § 330. CRS 53: § 72-14-13. C.R.S. 1963: § 72-13-13. L. 73: p. 848, § 4. L. 86: (2) amended, p. 556, § 7, effective July 1. L. 89: (2) amended, p. 438, § 9, effective July 1. L. 95: (1) and (3) amended, p. 496, § 15, effective May 16. L. 98: (2) amended, p. 228, § 2, effective April 10. L. 2001: (2) amended, p. 1213, § 41, effective January 1, 2002.

**Cross references:** For service of legal process, see § 10-3-1003.

**10-5-115. Authority of commissioner - assistance of brokers' association.** (1) The commissioner shall maintain such facilities as may be necessary to carry out the purposes of this article.

(2) The commissioner may rely upon the advice and assistance of a duly constituted association of brokers in carrying out the purposes of this article, if the association files with the commissioner:

(a) A copy of the association's constitution and articles of agreement or association or the association's certificate of incorporation and bylaws and any rules or regulations governing the association's activities;

(b) Deleted by amendment, L. 95, p. 496, § 16, effective May 16, 1995.)

(c) A list of the association's members;

(d) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued by the commissioner may be served.

(2.5) The commissioner may examine the association's records concerning the functions or duties performed on behalf of the commissioner by the association.

(3) The association shall provide a means for the examination of all surplus line coverages written in this state to determine whether such coverages comply with the law and such rules or regulations as may be issued by the commissioner.



(4) The commissioner may refuse to accept, or may suspend or revoke the acceptance of, an association for any of the following reasons:

(a) It reasonably appears that the association will not be able to carry out the purpose of this article;

(b) The association does not maintain and enforce rules or regulations which will assure that members of the association and persons associated with those members will comply with this article, other applicable articles of this title, and rules or regulations promulgated under either;

(c) The rules or regulations of the association do not assure a fair representation of its members in the selection of directors and in the administration of its affairs;

(d) The rules or regulations of the association do not provide for an equitable allocation of reasonable dues, fees, and other charges among members;

(e) The rules or regulations of the association impose an undue burden on competition;

(f) The association fails to meet other applicable requirements prescribed in this article.

(5) An association shall deny membership to any person who is not a licensee.

(6) A broker shall cooperate with the association and the commissioner of insurance in fulfilling the broker's statutory responsibilities under this article.

(7) There shall not be liability on the part of, nor shall a cause of action of any nature arise against, the association or its agents, employees, or directors or authorized representatives of the commissioner for actions taken or omitted by them in the performance of their powers and duties under this section.

(8) (a) Upon request from the association, the commissioner may approve the levy of an examination fee of not more than one percent of premiums charged pursuant to this article for the operation of the association to the extent that such operation relieves the commissioner of duties otherwise required of the commissioner under this article.

(b) The association may revoke the membership and the commissioner may revoke the license in this state of any licensee who fails to pay the examination fee when due, if the examination fee has been approved by the commissioner.

**Source:** L. 49: p. 472, § 14. CSA: C. 87, § 331. CRS 53: § 72-14-14. C.R.S. 1963: § 72-13-14. L. 81: Entire section R&RE, p. 540, § 6, effective January 1, 1982. L. 95: (2)(b), (6), and (7) amended and (2.5) added, p. 496, § 16, effective May 16; IP(2) amended, p. 1109, § 56, effective May 31. L. 2010: IP(2) amended, (HB 10-1220), ch. 197, p. 853, § 10, effective July 1.

**10-5-116. Records produced on order.** Every person for whom insurance is placed with a nonadmitted insurer pursuant to or in violation of this article, upon the commissioner's order, shall produce for the commissioner's examination all policies and other documents evidencing the insurance and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than ten thousand dollars.

**Source:** L. 49: p. 472, § 15. CSA: C. 87, § 332. CRS 53: § 72-14-15. C.R.S. 1963: § 72-13-15. L. 95: Entire section amended, p. 497, § 17, effective May 16. L. 2005: Entire section amended, p. 736, § 4, effective January 1, 2006.

**10-5-117. Rules and regulations.** The commissioner may make and publish reasonable rules and regulations consistent with this article in respect to the transactions governed thereby and for the basis for his determination under this article.

**Source:** L. 49: p. 472, § 16. CSA: C. 87, § 333. CRS 53: § 72-14-16. C.R.S. 1963: § 72-13-16.

**Cross references:** For rule-making procedures, see article 4 of title 24.

**10-5-118. Notice provisions not applicable to surplus lines.** The notice provisions in sections 10-4-109.7, 10-4-110, 10-4-110.5, and 10-4-110.7 shall not be applicable to insurance companies authorized pursuant to this article to write surplus lines insurance in Colorado.

**Source: L. 87:** Entire section added, p. 434, § 9, effective May 1.

**10-5-119. Disclosures regarding claims-made policies by surplus line brokers or insurers.** (1) In the event that a contract procured or placed by a Colorado surplus line broker is on a claims-made or other nonoccurrence policy form, the broker or the nonadmitted insurer shall stamp on the face of the policy a clear disclosure, as prescribed by the commissioner, which shall be in predominate type.

(2) The disclosure requirement in subsection (1) of this section shall not apply to transactions with exempt commercial policyholders as defined by section 10-4-1402 and the rules adopted by the commissioner pursuant to such section.

**Source: L. 87:** Entire section added, p. 434, § 9, effective May 1. **L. 92:** Entire section amended, p. 1494, § 22, effective July 1. **L. 95:** Entire section amended, p. 497, § 18, effective May 16. **L. 2005:** Entire section amended, p. 736, § 5, effective January 1, 2006.

## CAPTIVE INSURANCE COMPANIES

### ARTICLE 6

#### Captive Insurance Companies

10-6-101.	Short title.	10-6-117.	Security deposits - certificates. (Repealed)
10-6-102.	Legislative declaration.	10-6-118.	Deposit and safekeeping of securities and letters of credit. (Repealed)
10-6-103.	Definitions.	10-6-119.	Surplus - letter of credit. (Repealed)
10-6-104.	Scope of article. (Repealed)	10-6-120.	Examinations and investigations.
10-6-105.	Employee benefits - minimum coverages.	10-6-121.	Legal investments.
10-6-106.	Names of companies.	10-6-122.	Reinsurance.
10-6-107.	Formation and operation of captive insurance companies.	10-6-123.	Filing of policy provisions - no requirement of filing for pure captive insurance companies. (Repealed)
10-6-108.	Control of operations.	10-6-124.	Making of rates. (Repealed)
10-6-109.	Increase of capital. (Repealed)	10-6-125.	Filing of rates.
10-6-110.	Violations - penalty. (Repealed)	10-6-126.	Rating organizations - membership. (Repealed)
10-6-111.	No seal required on policies. (Repealed)	10-6-127.	Guaranty fund coverage - not required.
10-6-112.	Deemed incorporated under corporation law. (Repealed)	10-6-128.	Tax on premiums collected - exemptions - penalties.
10-6-113.	Authority to do business.	10-6-128.5.	Penalties.
10-6-114.	Reports and statements.	10-6-129.	Rules of commissioner.
10-6-115.	Grounds and procedure for suspension or revocation of certificate - review by commissioner.	10-6-130.	Laws applicable.
10-6-116.	Capital and surplus requirements.		

**10-6-101. Short title.** This article shall be known and may be cited as the "Colorado Captive Insurance Company Act".

**Source: L. 72:** p. 428, § 1. **C.R.S. 1963:** § 72-36-1.



**10-6-102. Legislative declaration.** It is the policy of the general assembly and the intent and purpose of this article to simplify the procedures for organizing and regulating the operations of captive insurance companies within the state of Colorado, to encourage the formation of such companies while retaining the integrity, financial solvency, and stability of insurance operations, and thereby promoting economic development and the general welfare of the people of the state of Colorado.

**Source:** L. 72: p. 428, § 1. C.R.S. 1963: § 72-36-2. L. 89: Entire section amended, p. 462, § 1, effective April 15. L. 94: Entire section amended, p. 541, § 1, effective April 6.

**10-6-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Affiliated company" means any company that directly or indirectly owns or controls a pure captive insurance company and any company owned or controlled, directly or indirectly, by a parent or subsidiary.

(2) "Captive insurance company" means a pure captive insurance company or a group captive insurance company.

(3) "Commissioner" means the commissioner of insurance.

(4) "Group" means any association of individual professional practitioners, corporations, partnerships, limited liability companies, or associations with substantially similar or related risks, the members of which collectively own, control, or hold with power to vote all of the outstanding voting securities or other ownership interest of a group captive insurance company.

(5) "Group captive insurance company" means any domestic insurance company licensed under the provisions of this article for the purpose of making insurance and reinsurance, including any company organized under the federal "Liability Risk Retention Act of 1986", as amended, 15 U.S.C. secs. 3901 to 3905. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its group members and employee benefits coverages.

(6) "Impairment" means that a captive insurance company's permissible assets are less than its liabilities, including as a liability the aggregate amount of any outstanding capital stock, or that its capital and surplus are less than the capital and surplus established pursuant to section 10-6-116.

(7) "Insolvency" means that a captive insurance company's permissible assets are less than all of its liabilities, excluding from such liabilities the aggregate amount of any outstanding capital stock.

(8) "Parent" means a corporation, partnership, or individual who directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities or other ownership interest of a pure captive insurance company.

(9) "Pure captive insurance company" means any domestic insurance company licensed under the provisions of this article for the purpose of making insurance and reinsurance. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities along with employee benefits coverages.

**Source:** L. 72: p. 429, § 1. C.R.S. 1963: § 72-36-4. L. 76: (3), (4), and (9) amended, p. 380, § 1, effective April 6. L. 87: (3), (4), (5), and (7) amended and (6.1) to (6.3) added, p. 435, § 1, effective May 22. L. 89: (3) and (10) amended, p. 462, § 2, effective April 15. L. 91: (9) amended, p. 1224, § 2, effective May 24. L. 94: Entire section R&RE, p. 541, § 2, effective April 6.

#### ANNOTATION

**Law reviews.** For note, "The Colorado Captive Insurance Company Act", see 49 Den. L.J. 441 (1973).

**10-6-104. Scope of article. (Repealed)**

**Source:** L. 72: p. 428, § 1. C.R.S. 1963: § 72-36-3. L. 76: (2) amended, p. 381, § 2, effective April 6. L. 87: (1)(a)(II) amended, p. 436, § 2, effective May 22. L. 91: (2) amended, p. 1224, § 3, effective May 24. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-105. Employee benefits - minimum coverages.** (1) Any captive insurance company issuing employee benefits coverages, as approved by the commissioner, in its plan of operation shall provide the minimum mandated insurance coverages required of insurance companies in the state.

(2) (a) (Deleted by amendment, L. 91, p. 1224, § 4, effective May 24, 1991.)

(b) (Deleted by amendment, L. 94, p. 542, § 3, effective April 6, 1994.)

**Source:** L. 72: p. 430, § 1. C.R.S. 1963: § 72-36-5. L. 76: (1) and (2)(a) amended, p. 381, § 3, effective April 6. L. 87: (2) amended, p. 436, § 3, effective May 22. L. 89: (1) amended, p. 463, § 3, effective April 15. L. 91: Entire section amended, p. 1224, § 4, effective May 24. L. 94: Entire section amended, p. 542, § 3, effective April 6.

**ANNOTATION**

**Law reviews.** For article, "The Pros and Cons of a Captive Legal Malpractice Insurer", see 16 Colo. Law. 244 (1986).

**10-6-106. Names of companies.** No captive insurance company shall adopt the name of any existing company nor any name which may be misleading to the public.

**Source:** L. 72: p. 430, § 1. C.R.S. 1963: § 72-36-6. L. 94: Entire section amended, p. 543, § 4, effective April 6.

**10-6-107. Formation and operation of captive insurance companies.** (1) No person shall engage in the business of insurance as a captive insurance company without first applying for and obtaining a certificate of authority from the commissioner stating that such person complies with the laws of this state. Applicants shall submit articles of incorporation or other documents of organization for examination. If accepted and approved by the commissioner and the attorney general, said articles or other documents of organization shall be filed in the office of the secretary of state. A copy of said articles or other documents of organization, certified by the secretary of state, shall be filed with the commissioner. Amendments to organizational documents shall be filed with the commissioner and in the office of the secretary of state.

(2) (Deleted by amendment, L. 94, p. 543, § 5, effective April 6, 1994.)

(3) Applicants for a captive insurance company certificate of authority shall file a detailed plan of operation, which shall include a feasibility study and any other information deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations. The commissioner is authorized to refuse to issue a certificate of authority until the commissioner is reasonably satisfied that the plan of operation contains sufficient indication of a successful insurance operation.

(4) (a) Each captive insurance company shall pay to the division of insurance a nonrefundable application fee of five hundred dollars in addition to any reasonable expenses to be paid pursuant to section 10-6-120. Each captive insurance company shall pay an annual license fee of five hundred dollars.

(b) Notwithstanding the amount specified for any fee in paragraph (a) of this subsection (4), the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is



credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(5) The principal and home office of every captive insurance company incorporated under this article shall be in the state of Colorado. Every captive insurance company shall maintain such books and records in this state as will enable the financial examination of the company by the commissioner.

(6) Group captive insurance companies shall limit their exposure to loss on any one risk or hazard to an amount not to exceed ten percent of capital and surplus, unless such risk or hazard is reinsured through an insurance company which is licensed or accredited in this state, or unless other safeguards to its financial solvency and stability are in place and are acceptable to the commissioner.

**Source:** L. 72: p. 430, § 1. C.R.S. 1963: § 72-36-7. L. 89: (1) to (3) amended, p. 463, § 4, effective April 15. L. 94: Entire section amended, p. 543, § 5, effective April 6. L. 98: (4) amended, p. 1327, § 30, effective June 1.

#### ANNOTATION

**Law reviews.** For article, "The Pros and Cons of a Captive Legal Malpractice Insurer", see 16 Colo. Law. 244 (1986).

**10-6-108. Control of operations.** The business of each captive insurance company shall be managed by a board of directors or other governing body consisting of not less than three persons. The organizational documents or bylaws shall provide for the terms, meetings, and elections of the directors and officers of the governing body. No individual may serve as a director or officer who has been convicted of fraud involving any financial institution or of a felony involving misuse of funds.

**Source:** L. 72: p. 431, § 1. C.R.S. 1963: § 72-36-8. L. 89: (1) amended, p. 464, § 5, effective April 15. L. 94: Entire section R&RE, p. 545, § 6, effective April 6.

#### ANNOTATION

**Law reviews.** For article, "The Pros and Cons of a Captive Legal Malpractice Insurer", see 16 Colo. Law. 244 (1986).

#### **10-6-109. Increase of capital. (Repealed)**

**Source:** L. 72: p. 432, § 1. C.R.S. 1963: § 72-36-9. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

#### **10-6-110. Violations - penalty. (Repealed)**

**Source:** L. 72: p. 432, § 1. C.R.S. 1963: § 72-36-10. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

#### **10-6-111. No seal required on policies. (Repealed)**

**Source:** L. 72: p. 432, § 1. C.R.S. 1963: § 72-36-11. L. 89: Entire section amended, p. 464, § 6, effective April 15. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-112. Deemed incorporated under corporation law. (Repealed)**

**Source:** L. 72: p. 432, § 1. C.R.S. 1963: § 72-36-12. L. 89: Entire section amended, p. 464, § 7, effective April 15. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-113. Authority to do business.** (1) The certificate of authority issued to a captive insurance company shall expire on June 30 each year and shall be renewed annually, upon payment of all required fees and filing of all lawfully required reports, if the company has continued to comply with the laws of this state.

(2) Within thirty business days from the day the division of insurance receives a complete filing, the division shall render a decision on the application.

**Source:** L. 72: p. 432, § 1. C.R.S. 1963: § 72-36-13. L. 76: (2) amended, p. 381, § 4, effective April 6. L. 87: (2) amended, p. 437, § 4, effective May 22. L. 91: (2) amended, p. 1225, § 5, effective May 24. L. 92: (1) amended, p. 1562, § 69, effective July 1. L. 94: Entire section amended, p. 545, § 7, effective April 6.

**10-6-114. Reports and statements.** (1) Every captive insurance company doing business in this state shall render to the commissioner a report, signed and sworn to by its chief officers, of its condition as of the end of each fiscal year, which shall be in a form prescribed by the commissioner and contain such information as the commissioner deems necessary. Such report shall be filed within sixty days following the company's fiscal year end. The fiscal year shall be the calendar year for all group captive insurance companies. The commissioner may require that the annual report include the information set forth in the then-current convention blank of the national association of insurance commissioners, including any instructions, procedures, and guidelines consistent with this article.

(2) The commissioner may prescribe the format and frequency of other reports to be filed, which may include, but shall not be limited to, summary loss reports, quarterly financial statements, audited annual financial statements, and other professional reports.

(3) (Deleted by amendment, L. 94, p. 545, § 8, effective April 6, 1994.)

**Source:** L. 72: p. 433, § 1. C.R.S. 1963: § 72-36-14. L. 89: Entire section amended, p. 464, § 8, effective April 15. L. 94: Entire section amended, p. 545, § 8, effective April 6.

**10-6-115. Grounds and procedure for suspension or revocation of certificate - review by commissioner.** (1) The certificate of authority of a captive insurance company to do business in this state may be revoked or suspended by the commissioner for any violation of this article, including without limitation the following:

- (a) Insolvency or impairment;
- (b) Failure to meet the requirements of section 10-6-116;
- (c) Refusal or failure to submit an annual report, as required by section 10-6-114, or any other report required by law or by lawful order of the commissioner;
- (d) Failure to comply with the provisions of its own charter, other organizational documents, bylaws, or approved plan of operation, if such failure renders its operation hazardous to the public or to its policyholders;
- (e) Failure to submit to examination;
- (f) Refusal or failure to pay the cost of examination, required premium taxes, or other penalty or fee assessed as authorized by law;
- (g) Use of methods which, although not otherwise specifically proscribed by law, render its operation hazardous or its condition unsound;
- (h) Refusal or failure otherwise to comply with this article or any other laws of this state.

(2) If the commissioner finds upon examination, hearing, or other evidence that any captive insurance company has committed any of the acts specified in subsection (1) of this



section, the commissioner may, after notice and hearing in accordance with article 4 of title 24, C.R.S., suspend or revoke such certificate of authority. The commissioner may issue an order appointing a supervisor to monitor the operations of the company if the commissioner deems it in the best interest of the public or of the policyholders of the company. The commissioner may commence a delinquency action pursuant to part 4 of article 3 of this title or a liquidation or rehabilitation action pursuant to part 5 of article 3 of this title.

(3) Any final decision of the commissioner on any matter pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 72: p. 433, § 1. C.R.S. 1963: § 72-36-15. L. 89: (1)(d) amended, p. 465, § 9, effective April 15. L. 92: (2) amended, p. 1562, § 70, effective May 20. L. 94: Entire section amended, p. 546, § 9, effective April 6.

**10-6-116. Capital and surplus requirements.** (1) No captive insurance company issued a certificate of authority shall be permitted to do any business in this state unless it maintains total capital and surplus of not less than five hundred thousand dollars.

(1.5) Upon a written finding by the commissioner that the approved plan of operation or the operational results of the captive insurance company require either additional capital or a larger surplus than required by this section, the commissioner may require that additional capital or surplus, or both, be obtained. Additional capital or surplus may be tendered in the form of an irrevocable letter of credit as set forth in subsection (2) of this section.

(2) Securities acceptable to the commissioner in the amount of three hundred thousand dollars, or such greater amount as determined by the commissioner, shall be held by the commissioner or under the joint control of the commissioner and the captive insurance company. The commissioner shall accept an irrevocable letter of credit, in a form acceptable to the commissioner, issued or confirmed by a qualified United States financial institution as defined in section 10-1-102 (17) on behalf of a captive insurance company in lieu of securities. All securities or letters of credit jointly held shall be the sole property of such captive insurance company and shall be free and clear of any claim or encumbrance.

(3) Jointly held securities or letters of credit, wherever located, shall be deemed to be held for the benefit of all captive insurance company policyholders.

(4) The commissioner shall release funds held under joint control upon a showing satisfactory to the commissioner that all debts, obligations, and liabilities of the captive insurance company have been paid and discharged, or adequate provisions for payment and discharge have been made therefor, and the captive insurance company's original certificate of authority has been returned to the commissioner.

**Source:** L. 72: p. 434, § 1. C.R.S. 1963: § 72-36-16. L. 87: (1) amended, p. 437, § 5, effective May 22. L. 89: (2) amended, p. 465, § 10, effective April 15. L. 92: (2) amended, p. 1562, § 71, effective May 20. L. 94: Entire section amended, p. 547, § 10, effective April 6. L. 2003: (2) amended, p. 617, § 15, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "The Pros and Cons of a Captive Legal Malpractice Insurer", see 16 Colo. Law. 244 (1986).

#### **10-6-117. Security deposits - certificates. (Repealed)**

**Source:** L. 72: p. 434, § 1. C.R.S. 1963: § 72-36-17. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-118. Deposit and safekeeping of securities and letters of credit. (Repealed)**

**Source:** L. 72: p. 434, § 1. C.R.S. 1963: § 72-36-18. L. 92: Entire section amended, p. 1563, § 72, effective May 20. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-119. Surplus - letter of credit. (Repealed)**

**Source:** L. 72: p. 435, § 1. C.R.S. 1963: § 72-36-19. L. 87: Entire section amended, p. 437, § 6, effective May 22. L. 92: (1) amended, p. 1563, § 73, effective May 20. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-120. Examinations and investigations.** (1) The commissioner or any person so authorized has the authority to examine the financial condition, affairs, and management of any applicant or captive insurance company operating under the laws of this state. For such purpose the commissioner shall have free access to all the books, papers, and documents relating to the business of the company, and the commissioner may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, or employees of such company and any other person in relation to its affairs, transactions, and conditions. The reasonable cost of examinations of captive insurance companies shall be paid by the company examined and shall include the expenses of the commissioner and the commissioner's assistants.

(2) The commissioner may use other independent professionals, such as qualified actuaries, risk managers, certified public accountants, or examiners of insurance companies. The commissioner may also accept, as a part of the examination, reports or portions thereof made by the persons specified in this subsection (2). All reasonable expenses and charges of such persons so retained shall be paid directly by the captive insurance company being examined.

**Source:** L. 72: p. 435, § 1. C.R.S. 1963: § 72-36-20. L. 89: (7) added, p. 465, § 11, effective April 15. L. 91: (7) amended, p. 1248, § 11, effective July 1. L. 94: Entire section R&RE, p. 548, § 11, effective April 6.

**10-6-121. Legal investments.** (1) Group captive insurance companies shall comply with the investment requirements and limitations applicable to other insurance companies under the laws of this state as described in sections 10-1-102 (2) and (16), 10-3-213 to 10-3-242, and 10-3-802.

(2) (a) Pure captive insurance companies shall not be subject to any restrictions on investments whatsoever; except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company or if such investments are not made in accordance with the approved plan of operation.

(b) A pure captive insurance company may make loans to its parent company if approved within its plan of operations.

(3) In lieu of a fidelity bond, the officers, directors, or managers of a captive insurance company shall demonstrate sufficient safeguards to protect the funds of the captive insurance company.

**Source:** L. 72: p. 436, § 1. C.R.S. 1963: § 72-36-21. L. 87: Entire section amended, p. 438, § 7, effective May 22. L. 89: (2) amended and (3) to (11) added, p. 466, § 12, effective April 15. L. 91: IP(10) amended, p. 1225, § 6, effective May 24. L. 94: Entire section R&RE, p. 549, § 12, effective April 6. L. 2003: (1) amended, p. 617, § 16, effective July 1.

**Cross references:** For the regulation of the financial affairs of insurance companies, see part 2 of article 3 of this title.



**10-6-122. Reinsurance.** (1) Except as otherwise provided in subsection (2) of this section, any captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to the provisions of section 10-3-118 and any applicable regulations.

(2) Notwithstanding the provisions of subsection (1) of this section, any captive insurance company may cede risks to a reinsurer not meeting the standards of said subsection (1) and may take reserve credits if the captive insurance company receives prior written approval from the commissioner.

**Source:** L. 72: p. 436, § 1. C.R.S. 1963: § 72-36-22. L. 94: Entire section R&RE, p. 549, § 13, effective April 6.

**Cross references:** For reinsurance generally, see § 10-3-701.

**10-6-123. Filing of policy provisions - no requirement of filing for pure captive insurance companies. (Repealed)**

**Source:** L. 72: p. 437, § 1. C.R.S. 1963: § 72-36-23. L. 87: (1) amended and (2) and (3) repealed, pp. 438, 439, §§ 8, 10, effective May 22. L. 89: (4) added, p. 467, § 13, effective April 15. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-124. Making of rates. (Repealed)**

**Source:** L. 72: p. 437, § 1. C.R.S. 1963: § 72-36-24. L. 87: Entire section repealed, p. 439, § 10, effective May 22.

**10-6-125. Filing of rates.** (1) A group captive insurance company's rates, rate classification systems, or funding levels shall be sufficient to fund expected operations and expenses. The commissioner may require that a pure captive insurance company file rating or funding data if such pure captive insurance company provides or plans to provide employee benefits.

(2) Rating structures for insurance applied to and paid by employees of a captive insurance company shall not be excessive, inadequate, or unfairly discriminatory.

**Source:** L. 72: p. 437, § 1. C.R.S. 1963: § 72-36-25. L. 79: (3) amended, p. 377, § 13, effective July 1. L. 87: (1) amended, p. 438, § 9, effective May 22. L. 89: (4) added, p. 467, § 14, effective April 15. L. 94: Entire section amended, p. 549, § 14, effective April 6.

**10-6-126. Rating organizations - membership. (Repealed)**

**Source:** L. 72: p. 437, § 1. C.R.S. 1963: § 72-36-26. L. 94: Entire section repealed, p. 554, § 20, effective April 6.

**10-6-127. Guaranty fund coverage - not required.** (1) Any provision of the law to the contrary notwithstanding, no captive insurance company shall be compelled to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state; nor shall any captive insurance company or its insured receive any benefit from such plan, pool, association, or guaranty or insolvency fund for claims arising out of operations of such captive insurance company.

(2) All policy forms or other evidence of coverage shall clearly disclose that guaranty fund coverage is not available.

**Source:** L. 72: p. 437, § 1. C.R.S. 1963: § 72-36-27. L. 94: Entire section amended, p. 550, § 15, effective April 6.

**10-6-128. Tax on premiums collected - exemptions - penalties.** (1) All captive insurance companies doing business in this state shall pay to the division of insurance an annual tax on the gross amount of all premiums collected, less premiums or premium credits returned to policyholders, on policies or contracts of insurance covering property or risks in this state and on risks and property situated in any other state in which the insurer has not paid premium tax.

(2) The tax imposed by subsection (1) of this section shall be the greater of:

(a) Five thousand dollars; or

(b) (I) One-half of one percent of the first twenty-five million dollars, plus one-quarter of one percent of the next fifty million dollars, plus one-tenth of one percent of each dollar thereafter of direct premiums collected, of the captive insurance company, plus:

(II) One-quarter of one percent of the first twenty million dollars, plus one-tenth of one percent of each dollar thereafter of assumed reinsurance premiums.

(c) and (d) (Deleted by amendment, L. 94, p. 550, § 16, effective April 6, 1994.)

(e) Premium tax shall not be payable in connection with the receipt of assets in exchange for the assumption of existing loss reserves and other liabilities.

(2.5) The minimum tax provided for in paragraph (a) of subsection (2) of this section shall be due and payable on the first day of March of each fiscal year, accompanied by such forms as may be prescribed by the commissioner. The balance of the tax when payable for each fiscal year shall be paid on forms prescribed by the commissioner together with the report required under section 10-6-114 (1). The commissioner may by rule require partial payments, to be made in quarterly installments, of the balance of the tax payable.

(3) The taxes provided for in this section shall constitute all taxes collectible under the laws of this state against any such captive insurance companies, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or town within this state, except ad valorem taxes on real and personal property used in the production of income.

(4) to (8) (Deleted by amendment, L. 94, p. 550, § 16, effective April 6, 1994.)

**Source:** L. 72: p. 438, § 1. C.R.S. 1963: § 72-36-28. L. 91: (1) and (2) amended, p. 1225, § 7, effective January 1, 1992. L. 94: Entire section amended, p. 550, § 16, effective April 6.

**10-6-128.5. Penalties.** (1) The commissioner may charge a late fee of up to one hundred dollars per day for any required or reasonably requested report which is received after the filing deadline.

(2) Any company failing to pay taxes as specified in this article shall be liable to pay a penalty of up to one hundred dollars for each day of delinquency. If the tax paid is less than the full amount prescribed by this article, interest at the rate of one percent per month or fraction thereof on the unpaid amount shall be charged from the date payment was due until the date full payment is received, and a penalty of up to twenty-five percent of the unpaid amount may be assessed. The amount of taxes and the penalties collected shall be transmitted to the state treasurer and credited to the general fund.

(3) The assessment of any fee or penalty against a captive insurance company shall be subject to the company's right to request a hearing and to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(4) Any director, trustee, officer, agent, or employee of a captive insurance company or any other person who knowingly or willfully makes any materially false certificate, entry, or memorandum upon any of the books or papers of any captive insurance company or upon any statement filed or offered to be filed in the division of insurance or used in the course



of any examination, inquiry, or investigation with the intent to deceive the commissioner or any person appointed by the commissioner to make such examination commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** **L. 94:** Entire section added, p. 553, § 17, effective April 6. **L. 2002:** (4) amended, p. 1468, § 27, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

**10-6-129. Rules of commissioner.** The commissioner may establish and from time to time amend such reasonable rules as are necessary to enable the commissioner to carry out the commissioner’s duties under this article, including rules concerning the establishment and nature of loss reserves.

**Source:** **L. 72:** p. 439, § 1. **C.R.S. 1963:** § 72-36-29. **L. 92:** Entire section amended, p. 1564, § 74, effective May 20. **L. 94:** Entire section amended, p. 553, § 18, effective April 6.

**10-6-130. Laws applicable.** (1) The provisions of law generally applicable to insurance companies shall not apply to captive insurance companies except as specifically provided in this article and except that captive insurance companies are subject to parts 9 and 10 of article 2 of this title and parts 7, 11, and 12 of article 3 of this title.

(2) Group captive insurance companies are subject to the provisions of section 10-3-208 (3) to (7), part 2 of article 1 of this title, article 2 of this title, and parts 8 and 14 of article 3 of this title.

(3) The malpractice reporting requirements of sections 10-1-120 to 10-1-125 shall apply to captive insurance companies.

**Source:** **L. 72:** p. 439, § 1. **C.R.S. 1963:** § 72-36-30. **L. 89:** Entire section amended, p. 468, § 15, effective April 15. **L. 91:** Entire section amended, p. 1226, § 8, effective May 24. **L. 94:** Entire section amended, p. 554, § 19, effective April 6. **L. 97:** (2) amended, p. 92, § 2, effective March 24. **L. 2003:** (3) amended, p. 618, § 17, effective July 1.

LIFE INSURANCE

ARTICLE 7

Life Insurance

	PART 1	10-7-109.	Suicide no defense for nonpayment.
	GENERAL	10-7-110.	Minor’s capacity to contract for life insurance and annuities and to exercise rights concerning same. (Repealed)
10-7-101.	Valuation of life policies.		
10-7-102.	Life insurance policies - requirements.	10-7-111.	Minor’s capacity to give acquittances for insurance or annuity payments. (Repealed)
10-7-103.	Life insurance policies - prohibition.		
10-7-104.	Exceptions.	10-7-112.	Interest payable on benefits or proceeds.
10-7-105.	Violation.	10-7-113.	Acceleration of benefits.
10-7-106.	Exclusive right of insured in proceeds.	10-7-114.	Actuarial opinion of reserves.
10-7-107.	Nonforfeiture benefits - applicability.	10-7-115.	Insurable interest - 170 (c) organizations.
10-7-108.	Regulating vouchers for disbursements.	10-7-116.	Military sales - rules.

## PART 2

## GROUP LIFE INSURANCE

- 10-7-201. Group life insurance.
- 10-7-202. Policy provisions.
- 10-7-203. Employer defined.
- 10-7-204. Reciprocal provisions.
- 10-7-205. Exemption from execution.
- 10-7-206. Issuance and valuation of policies - annual statement.
- 10-7-207. Assignment.

## PART 3

STANDARD NONFORFEITURE  
AND VALUATION ACT

- 10-7-301. Short title.
- 10-7-302. Compulsory policy provisions.
- 10-7-303. Computation of cash surrender value.
- 10-7-304. Computation of nonforfeiture benefit.
- 10-7-305. Adjusted premiums.
- 10-7-305.1. Adjusted premiums for new policies.
- 10-7-305.2. Future premium determination - standards.
- 10-7-306. Calculation of values - supplemental rules.
- 10-7-306.1. Calculation of values - new policies.
- 10-7-307. Exemptions.
- 10-7-308. Waiver prohibited.
- 10-7-309. Minimum standard of valuation.
- 10-7-309.5. Minimum standards of valuation for new policies.
- 10-7-310. Life and endowment reserves.
- 10-7-310.5. Individual annuity and pure endowment reserves.
- 10-7-311. Minimum aggregate reserves.
- 10-7-312. Optional standards.
- 10-7-313. Minimum reserves.
- 10-7-313.5. Minimum reserves - exceptions.
- 10-7-313.7. Minimum standards for other coverages.
- 10-7-314. Automatic premium loans.
- 10-7-315. Operative date.
- 10-7-316. Effect on existing policies.

## PART 4

## VARIABLE CONTRACTS

- 10-7-401. Sales not prohibited.
- 10-7-402. Investment contract funds - separate accounts.
- 10-7-403. Where benefits are payable in variable amounts.

- 10-7-404. Authority to issue variable contracts.
- 10-7-405. Construction.

## PART 5

STANDARD NONFORFEITURE LAW  
FOR INDIVIDUAL DEFERRED  
ANNUITIES

- 10-7-501. Short title.
- 10-7-502. Exemptions.
- 10-7-503. Compulsory contract provisions.
- 10-7-504. Minimum nonforfeiture amounts - rules.
- 10-7-505. Computation of annuity benefit.
- 10-7-506. Computation of cash surrender benefit.
- 10-7-507. Computation of paid-up annuity nonforfeiture benefit.
- 10-7-508. Determination of maturity date.
- 10-7-509. Calculations of values - supplemental rules.
- 10-7-510. Effective date - applicability of part.
- 10-7-511. Rule-making authority.

## PART 6

## VIATICAL SETTLEMENTS

- 10-7-601. Short title.
- 10-7-602. Definitions.
- 10-7-603. Licensing.
- 10-7-604. Licensure - refusal to issue - suspension - revocation - refusal to renew.
- 10-7-605. Forms approval.
- 10-7-606. Annual reports.
- 10-7-607. Examinations.
- 10-7-608. Disclosures.
- 10-7-609. General requirements.
- 10-7-610. Limited purchase in incontestability period.
- 10-7-611. Advertising - legislative intent.
- 10-7-612. Fraudulent acts.
- 10-7-613. Penalties.
- 10-7-614. Unfair trade practices.
- 10-7-615. Rules.
- 10-7-616. No preemption - Colorado Securities Act - authority of division of securities.
- 10-7-617. Application.
- 10-7-618. Continuation of business.
- 10-7-619. Viatical settlements cash fund - created.
- 10-7-620. Severability.



PART 7		10-7-705.	Insured's own life.
INSURABLE INTEREST ACT		10-7-706.	Reliance on statements.
		10-7-707.	Consent of insured.
		10-7-708.	Prohibited practices.
		10-7-709.	Actions to recover death benefits.
10-7-701.	Short title.	10-7-710.	Legitimate insurance transactions.
10-7-702.	Definitions.		
10-7-703.	Insurance on the life of another.		
10-7-704.	Insurable interest.		

PART 1

GENERAL

**10-7-101. Valuation of life policies.** (1) As soon as practicable after the filing of the annual statement, the reserves for all outstanding policies of all life insurance companies making such statements shall be ascertained as provided in this section.

(2) (a) The commissioner shall ascertain the reserve for every policy in force on the books of domestic companies on the thirty-first day of December immediately preceding, in accordance with the following minimum standards:

(I) With respect to policies issued prior to March 28, 1945, the American experience table of mortality and four percent interest or the actuaries' combined experience table of mortality and four percent interest, as adopted by the company, with the privilege of one year preliminary term in either case; but, if any such company has any such policies outstanding issued on the basis of a higher reserve standard than the above, such higher standard shall be the minimum standard for such policies;

(II) With respect to policies issued after March 28, 1945, the American experience table of mortality and three and one-half percent interest, or the commissioner's 1941 standard ordinary mortality table and three and one-half percent interest, or, for industrial policies, the 1941 standard industrial mortality table and three and one-half percent interest, as adopted by the company, with the privilege of one year preliminary term in any case. For policies issued on a substandard basis, such other table of mortality as may be specified by the company and approved by the commissioner may be used. The mortality table and rate of interest prescribed in any of such policies as the basis for calculating nonforfeiture benefits thereunder, with the privilege of one year preliminary term, shall be used as the minimum standard for the valuation of such policies in case that standard produces greater aggregate reserves for all such policies than the standards above specified in this subparagraph (II).

(III) With respect to policies issued on or after the operative date of the "Standard Nonforfeiture and Valuation Act", in accordance with the provisions of sections 10-7-309 to 10-7-313.

(b) The commissioner may accept the valuation made by the company, upon satisfactory proof of its correctness.

(3) The reserve for all policies in force in any such domestic company being ascertained, as provided in this section, within sixty days thereafter, the company, at its option, may deposit with the commissioner for security and benefit of its policyholders the amount of the ascertained valuation in admitted assets which under section 10-3-235 (2) are securities eligible for optional reserve deposits. All companies depositing sufficient reserves as provided in this section may print on their policies a certificate reading as follows: "The full reserve on this policy is deposited with the insurance commissioner in approved securities in accordance with the optional reserve deposit law of the state of Colorado".

(4) In valuing policies issued by foreign companies, the respective standard adopted by each company for such policies shall be used as the basis of such valuation, but in no case shall such standard be lower than the standard prescribed by subsection (2) of this section for domestic companies. The commissioner may accept the valuation of such policies as certified to him by the commissioner of the home states of such foreign companies respectively.

(5) Reserves for all policies may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves than the minimum reserves required by this section.

(6) Valuation in the case of an alien company shall be limited to its United States business.

**Source:** L. 13: p. 349, § 41. L. 15: p. 271, § 1. C.L. § 2514. CSA: C. 87, § 54. L. 45: p. 413, § 1. CRS 53: § 72-3-1. L. 61: p. 465, § 9. C.R.S. 1963: § 72-3-1. L. 65: p. 765, § 1. L. 69: p. 500, § 6.

**Cross references:** For operative date of the “Standard Nonforfeiture and Valuation Act”, see § 10-7-315; for required financial statements, see § 10-3-208.

**10-7-102. Life insurance policies - requirements.** (1) It is unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy unless the same contains the following provisions:

(a) A provision that all premiums shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the duly authorized officers, unless the first payment is set forth in the policy, in which case the policy itself shall be a receipt;

(b) A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums and except for violation of the conditions of the policy relating to naval and military service in time of war or other prohibited risks, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted;

(c) A provision that no statement made by the insured shall avoid the policy unless it is contained in a written application and a copy of such application is endorsed upon or attached to the policy when issued;

(d) A provision that, if the age of the insured is misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age;

(e) A provision which fulfills the requirements of section 10-3-205. This provision shall not be required in nonparticipating policies.

(f) As to any policy issued prior to the operative date of the “Standard Nonforfeiture and Valuation Act”, a provision fulfilling the requirements of section 10-7-107; except that such provision is not required in term insurance of twenty years or less; as to any policy issued on or after the operative date of the “Standard Nonforfeiture and Valuation Act”, provisions which fulfill the provisions of sections 10-7-302 to 10-7-307;

(g) A table showing in figures the loan values, if any, and the options available under the policies each year upon default in premium payments, during at least the first twenty years of the policy or during the life of the policy, if less than twenty years, beginning with the year in which such values and options become available;

(h) A table showing the amounts of installments in which the policy provides its proceeds are payable;

(i) A provision for a grace of one month, not less than thirty days, for the payment of every premium after the first year which is subject to an interest charge, during which month the insurance shall continue in force; but if the insured dies within the month of grace, the unpaid premium for the current policy year may be deducted in any settlement under the policy;

(j) If a policy is advertised or marketed as a means of payment of final expenses for funeral, interment, entombment, or cremation merchandise or services other than according to the provisions of article 15 of this title, the policy shall state in predominate type:

**THIS POLICY DOES NOT GUARANTEE THAT ITS PROCEEDS  
WILL BE SUFFICIENT TO PAY FOR ANY PARTICULAR SERVICES OR**



**MERCHANDISE AT TIME OF NEED OR THAT SERVICES OR MERCHANDISE SHALL BE PROVIDED BY ANY PARTICULAR PROVIDER.**

(2) Any of the provisions of subsection (1) of this section or portions thereof relating to premiums not applicable to single premium policies shall to that extent not be incorporated therein.

**Source:** L. 13: p. 350, § 43. C.L. § 2516. L. 27: p. 449, § 1. CSA: C. 87, § 57. CRS 53: § 72-3-4. L. 61: p. 465, § 10. C.R.S. 1963: § 72-3-4. L. 95: (1)(j) added, p. 1046, § 2, effective May 25.

**Cross references:** For operative date of the "Standard Nonforfeiture and Valuation Act", see § 10-7-315.

**ANNOTATION**

- I. Required Provisions.
  - A. In General.
  - B. Incontestable Clause.
  - C. False Statements.
  - D. Correct Age.
  - E. Grace Period.
- II. Nonapplicability.

**I. REQUIRED PROVISIONS.**

**A. In General.**

**This section is a limitation on the general right of contract and such statutes are strictly construed.** In case of doubt they are resolved in favor of the contract right. *Mutual Life Ins. Co. v. Daniels*, 125 Colo. 451, 244 P.2d 1064, (1952).

**In case of an ambiguity, the matter is to be construed most strongly against the insurer.** *Coxen v. Western Empire Life Ins. Co.*, 168 Colo. 444, 452 P.2d 16 (1969).

**Supplemental or modifying contracts are not prohibited.** It will be noted that the terms of this section do not prohibit the company and insured from entering into supplementary or modifying contracts not contemplated when the policy was issued. *Sethman Elec. & Mfg. Co. v. Mountain States Life Ins. Co.*, 93 Colo. 64, 23 P.2d 952 (1933).

**Supplemental or modified contracts are admissible in evidence.** In an action on a life insurance policy, evidence in the form of a note and supplemental contract for the extension of time of payment of an overdue premium was held properly admitted over the objection that they tended to vary the terms of the original policy. *Sethman Elec. & Mfg. Co. v. Mountain States Life Ins. Co.*, 93 Colo. 64, 23 P.2d 952 (1933).

**B. Incontestable Clause.**

**The incontestable clause is intended not to enlarge the scope of the insurer's promise so as to include liability for death due to causes**

which are excluded either by express terms of the policy or by implication of law, but to make certain the enforceability of the promise as set out in the policy. Properly interpreted, therefore, the incontestable clause does not exclude a defense based on a suicide clause. Such a defense does not contest the validity of the policy, as does a defense of fraud in procuring the policy; it supports the policy, but asserts that by its terms the insurer is not bound to pay where death is caused by suicide. *Mutual Life Ins. Co. v. Daniels*, 125 Colo. 451, 244 P.2d 1064 (1952).

**It means only this, that within the limits of the coverage the policy shall stand, unaffected by any defense that it was invalid in its inception or thereafter became invalid by reason of a condition broken.** *Mutual Life Ins. Co. v. Daniels*, 125 Colo. 451, 244 P.2d 1064 (1952).

**Incontestable clause should not be used to interpret ambiguous provisions of contract.** It is apparent that the incontestability clause was placed in the policy by reason of the requirement of the statute. This being so, it is improper to draw from the clause an implication of contestability by reason of death during the first two years caused by disease originating prior to issuance of the policy. A provision necessitated by statute should not be used to determine the intent of the parties as to the meaning of an ambiguous clause in another portion of the document. *Coxen v. Western Empire Life Ins. Co.*, 168 Colo. 444, 452 P.2d 16 (1969).

**The regulation of insurance companies and their policy provisions is within the police power of the state** which through its general assembly may, within reasonable limits, prescribe the terms of such contracts. *Union Mut. Life Co. v. Bailey*, 99 Colo. 570, 64 P.2d 1267 (1937); *Mutual Life Ins. Co. v. Daniels*, 125 Colo. 451, 244 P.2d 1064 (1952).

**Two-year period is a time for insurer to discover fraud.** The two-year period is a time within which, by the exercise of proper diligence, the insurer may discover any fraud perpetrated in the procurement of the policy, and

within which it may protect itself against any such fraud. *Union Mut. Life Co. v. Bailey*, 99 Colo. 570, 64 P.2d 1267 (1937).

**Contestability period runs from date permanent policy is issued not from date conditional receipt providing temporary coverage was issued.** Permanent life insurance policy was not "issued" until insured complied with certain insurer requirements, so insurer was still within two-year contestability period when it challenged policy based on fact that deceased had lied about drug history on application. *Pappageorge v. Federal Kemper Life Assurance Co.*, 878 P.2d 56 (Colo. App. 1994).

**Time limits on incontestability clause run anew as to matters affecting validity of reinstatement.** In action to recover proceeds from term life insurance policy, incontestability clause in policy which lapsed for non-payment of premiums did not apply to bar insurer's assertion of defense that misrepresentations were made in reinstatement application. *Spencer v. Kemper Investors Life Ins.*, 764 P.2d 408 (Colo. App. 1988).

#### C. False Statements.

**No statement of the insured may avoid the policy unless contained in written application.** Since this section provides that no statement made by the insured shall avoid the policy unless it is contained in a written application, any alleged representations or misrepresentations which the deceased made are not available to avoid or cancel the policy. *Universal Life & Accident Ins. Co. v. Bopp*, 141 Colo. 324, 347 P.2d 783 (1959).

**Contents of this section contained in the policy.** Under the provisions of this section, a life insurance policy must contain clauses reciting that it constitutes the entire contract, and that no statement of the assured shall avoid the policy unless contained in the written application, a copy of which is attached to the policy. *New York Life Ins. Co. v. Fukushima*, 74 Colo. 236, 220 P. 994 (1923).

**In order to avoid a policy**, it was incumbent upon the insurer to prove not only that the answers in the application were false and material, but in addition that the applicant intended to deceive the insurer. *Gomogda v. Prudential Ins. Co. of Am.*, 31 Colo. App. 154, 501 P.2d 756 (1972).

**Test must be one of fraud and deceit.** In Colorado an insurance policy cannot be avoided

on the basis of false statements or declarations of an applicant, unless such statements or declarations are material to the risk or form the basis on which the policy is issued and they are made with knowledge on the part of the applicant of matters which make them false or misleading. Thus, the test is one of fraud or deceit. *Gomogda v. Prudential Ins. Co. of Am.*, 31 Colo. App. 154, 501 P.2d 756 (1972).

**Fraud and deceit test expanded** to include required showing that insurer was ignorant of false statement of fact or concealment of fact and is chargeable with knowledge and that the insurer relied, to its detriment, on representation in issuing policy. *Hollinger v. Mutual Benefit Life Insurance Co.*, 560 P.2d 824 (1977).

**Test applied** in *Spencer v. Kemper Investors Life Insurance*, 764 P.2d 408 (Colo. App. 1988).

#### D. Correct Age.

**When true age makes insured ineligible.** Material misrepresentation of the age of insured whereby he obtained membership in a fraternal benefit society to which his true age made him ineligible held to bar a recovery on the certificate. *Wiltshire v. Modern Woodmen of Am.*, 76 Colo. 460, 232 P. 925 (1925).

#### E. Grace Period.

**This section and § 10-7-107 do not require an insurance company to reinstate a policy which has lapsed.** *Colo. Life Ins. Co. v. Winegarner*, 95 Colo. 261, 35 P.2d 860 (1934).

**Nor do they provide for any benefits for a lapsed policy.** This section and § 10-7-107 do not provide for any benefit to the insured after the lapse of the grace period, when this occurs before the payment of three full years' premiums. *Colo. Life Ins. Co. v. Winegarner*, 95 Colo. 261, 35 P.2d 860 (1934).

### II. NONAPPLICABILITY.

**Section does not apply to fraternal benefit societies.** Where the decedent obtained membership in a fraternal benefit society to which his true age made him ineligible and which society is specifically excepted by § 10-7-104, from the operation of this section, it was held that an action by the beneficiary was not maintainable. *Wiltshire v. Modern Woodmen of Am.*, 76 Colo. 460, 232 P. 925 (1925).

**10-7-103. Life insurance policies - prohibition.** (1) It is unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy if it contains any of the following provisions:

(a) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contains a stipulation that no such forfeiture shall



occur until at least one month after notice has been mailed by the company to the last known address of the insured and of the assignee, if any;

(b) A provision limiting the time within which any action may be commenced to less than five years after the cause of action accrues;

(c) A provision by which the policy purports to be issued or to take effect more than one year before the original application for the insurance was made, if thereby the assured would rate at an age not more than one year younger than his age at date when application was made, according to his age at nearest birthday.

(2) A life insurance company doing business in Colorado may not refuse to insure, refuse to continue to insure, limit the amount or extent or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's past or future lawful foreign travel. Nothing in this subsection (2) shall prohibit a life insurer from excluding or limiting coverage of specific lawful travel, or charging a differential rate for such coverage, when bona fide differences in risk or exposure have been substantiated by the use of relevant data from at least one independent reliable source, including statistical or other mathematical analysis of available data that establishes a material variation in actual or reasonably anticipated experience that correlates to the risk of specific lawful travel. Travel advisories issued by the United States department of state shall not qualify as the sole source of data for purposes of this subsection (2). Each insurer shall maintain the data and documents that support any such differences and shall make the data and documents available upon request by the commissioner.

**Source:** L. 13: p. 351, § 44. C.L. § 2517. CSA: C. 87, § 58. CRS 53: § 72-3-5. C.R.S. 1963: § 72-3-5. L. 2006: (2) added, p. 710, § 1, effective July 1.

**Cross references:** For the effect of a declaration under the "Colorado Medical Treatment Decision Act" on life insurance contracts, see § 15-18-111.

#### ANNOTATION

**This section applies to "life insurance" only, and not to "accident insurance".** Midland Cas. Co. v. Frame, 67 Colo. 179, 185 P. 656

(1919); Union Health & Accident Co. v. Welch, 71 Colo. 374, 206 P. 790 (1922).

**10-7-104. Exceptions.** The provisions of sections 10-7-102 and 10-7-103 shall not apply to annuities, industrial policies, or corporations or associations operating on the assessment or fraternal plan; except that the commissioner may review variable annuities to ensure that such products are offered, marketed, or sold to a market suitable for such product.

**Source:** L. 13: p. 352, § 45. C.L. § 2518. CSA: C. 87, § 59. CRS 53: § 72-3-6. C.R.S. 1963: § 72-3-6. L. 2004: Entire section amended, p. 520, § 9, effective July 1.

#### ANNOTATION

**Provisions of § 10-7-102 not applicable to fraternal societies.** Where the decedent obtained membership in a fraternal benefit society to which his true age made him ineligible and which society is specifically excepted by this

section, from the operation of § 10-7-102, it was held that an action by the beneficiary was not maintainable. Wiltshire v. Modern Woodmen of Am., 76 Colo. 460, 232 P. 925 (1925).

**10-7-105. Violation.** The certificate of authority of any foreign or domestic life insurance company violating any of the provisions of sections 10-7-102 and 10-7-103 shall be suspended by the commissioner and shall not be renewed until such company fully and completely conforms to the same. Such action by the commissioner is subject to review by any court of competent jurisdiction.

**Source:** L. 13: p. 352, § 46. C.L. § 2519. CSA: C. 87, § 60. CRS 53: § 72-3-7. C.R.S. 1963: § 72-3-7.

**10-7-106. Exclusive right of insured in proceeds.** Whenever, under the terms of any annuity or policy of life insurance, or under any written agreement supplemental thereto, issued by any insurance company, domestic or foreign, lawfully doing business in this state, the proceeds are retained by such company at maturity or otherwise, no person, other than the insured, entitled to any part of such proceeds or any installment of interest due or to become due thereon shall be permitted to commute, anticipate, encumber, alienate, or assign the same, or any part thereof, if such permission is expressly withheld by the terms of such policy or supplemental agreement; and, if such policy or supplemental agreement so provides, no payments of interest or of principal shall be in any way subject to such person's debts, contracts, or engagements nor to any judicial processes to levy upon or attach the same for payment thereof.

**Source:** L. 25: p. 310, § 1. CSA: C. 87, § 64. CRS 53: § 72-3-11. C.R.S. 1963: § 72-3-11.

#### ANNOTATION

**This section does not exempt annuity contracts from a debtor's bankruptcy estate.** The "exemption-like" language in this statute goes to insulating annuity proceeds, not from creditors of the owner of the annuity, but only from creditors of others who may have an economic stake in the annuity, and then, only if the annuity contract so provides. If it does not, then even creditors of an annuity payee or creditors of a death beneficiary can go after annuity proceeds by way of attachment or execution. This statute does not even address limiting the rights of creditors of the debtor annuity owner in this case. It is designed not to protect those with an economic interest in an annuity from their own

creditors. Instead, it is designed to uphold limitations on whose creditors an insurer/issuer of an annuity contract must deal with when the annuity contract so provides. In re Besser, 356 B.R. 531 (Bankr. D. Colo. 2007).

**This section does not provide an exemption for a bankrupt insured but it does provide an exemption for an annuity payment due a bankrupt beneficiary** provided that the proceeds of the annuity are retained and the annuity's express terms withhold the right of the beneficiary to assign or encumber those payments. In re Brown, 387 B.R. 611 (D. Colo. 2008).

**10-7-107. Nonforfeiture benefits - applicability.** (1) In the event of default in the payment of any premium due on any policy issued after March 28, 1945, except term or convertible term policies, if not less than three full years' premiums have been paid thereon, there shall be secured to the insured, without action on his part, as specified in the policy, either paid-up insurance or extended insurance. The net value applied to such paid-up insurance or extended insurance shall be at least equal to the amount which would constitute the then reserve on the policy, including dividend additions, if any, calculated, with the privilege of one year preliminary term, upon the mortality table and rate of interest used in the policy as a basis for the calculation of such nonforfeiture benefits under the policy, less two and one-half percent of the amount insured by the policy and dividend additions, if any, or one-fifth of such reserve, and less any outstanding indebtedness to the company on the policy at time of default; but the mortality table and rate of interest used as a basis for the calculation of such nonforfeiture benefits shall be designated in the policy and shall be a mortality table and an interest rate acceptable for the valuation of such policy pursuant to section 10-7-101 (2).

(2) If the mortality table so designated in any such policy is other than the American experience table of mortality, a rate of mortality not more than one hundred thirty percent of the rate of mortality according to the table designated may be assumed in calculating any extended insurance, with accompanying pure endowment, if any, offered as a nonforfeiture benefit.

(3) There shall be secured to the insured the right to surrender the policy to the company at its home office within one month after date of default for the cash value



otherwise available for paid-up insurance or extended insurance, but the right to cash dividends or to cash surrender value, provided by this section and section 10-3-205, may be specifically waived in the policy.

(4) Nothing in this section shall be construed to prohibit the company from including in its policies a provision for automatic premium loans to prevent premium default.

(5) No agreement between the company and the policyholder or applicant for insurance shall be held to waive any of the provisions of this section and section 10-3-205, except as provided in this section.

(6) Subsections (1) to (5) of this section shall not apply to any policy issued on or after the operative date of the "Standard Nonforfeiture and Valuation Act". As to any such policy the provisions of sections 10-7-302 to 10-7-308 shall be applicable.

**Source:** L. 13: p. 353, § 50. C.L. § 2523. CSA: C. 87, § 65. L. 45: p. 414, § 2. CRS 53: § 72-3-12. L. 61: p. 465, § 11. C.R.S. 1963: § 72-3-12.

**Cross references:** For operative date of the "Standard Nonforfeiture and Valuation Act", see § 10-7-315.

**10-7-108. Regulating vouchers for disbursements.** No domestic life insurance company shall make any disbursement unless the same is evidenced by a voucher correctly describing the consideration for the payment. If the expenditure is for both services and disbursements, the voucher shall set forth the services rendered and an itemized statement of the disbursements made. If the expenditure is in connection with any matter pending before any legislative or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher.

**Source:** L. 13: p. 354, § 51. C.L. § 2524. CSA: C. 87, § 66. CRS 53: § 72-3-13. C.R.S. 1963: § 72-3-13. L. 71: p. 717, § 1.

**10-7-109. Suicide no defense for nonpayment.** The suicide of a policyholder after the first policy year of any life insurance policy issued by any life insurance company doing business in this state shall not be a defense against the payment of a life insurance policy, whether said suicide was voluntary or involuntary, and whether said policyholder was sane or insane. Nothing in this section is intended or shall be construed to apply to any accident insurance policy insuring against accidental death or death by accidental means or to those parts or provisions of any life insurance policy insuring specifically against accidental death or death by accidental means.

**Source:** L. 13: p. 358, § 59. C.L. § 2532. L. 35: p. 573, § 1. CSA: C. 87, § 76. CRS 53: § 72-3-23. C.R.S. 1963: § 72-3-23.

## ANNOTATION

I. General Consideration.

II. Suicide as a Defense.

A. To Suit on Life Policy.

B. To Suit on Accident Policy.

C. Conflict of Laws.

### I. GENERAL CONSIDERATION.

**Law reviews.** For note, "Is an Accident Policy a Life Insurance Policy?", see 1 Rocky Mt.

L. Rev. 49 (1928). For article, "Suicide, Sane or Insane", see 12 Dicta 32 (1934). For note, "Suicide While Insane as a Defense to Life and Accident Policies", see 8 Rocky Mt. L. Rev. 216 (1936). For article, "Life Insurance and Suicide History and the Colorado Statute", see 41 Den. L. Ctr. J. 51 (1964).

**Purpose of this section** is to protect an insurance company against fraud on the part of the insured. *Ownbey v. General United Life Ins.*

Co., 34 Colo. App. 33, 524 P.2d 636 (1974).

**Assumption made by general assembly in enacting section.** The general assembly in enacting this section assumed that after one whole year had elapsed from the time the insured made application for the policy it should be conclusively presumed that he did not contemplate suicide when he made the application, and consequently that he did not contemplate defrauding the company by taking his own life. *Ownbey v. General United Life Ins. Co.*, 34 Colo. App. 33, 524 P.2d 636 (1974).

**This section expresses a public policy** which cannot be nullified by any scheme or device. *New York Life Ins. Co. v. West*, 102 Colo. 591, 82 P.2d 754 (1938).

**This section is constitutional.** This section, which provides that the suicide of a policyholder after the first policy year shall not be a defense against payment of the policy, is not in conflict with the constitution, and any provision in an accident or life insurance policy attempting to relieve the insurer from liability in case of suicide is a nullity. *Massachusetts Protective Ass'n v. Daugherty*, 87 Colo. 469, 288 P. 888 (1930).

**Furthermore, it is not merely procedural;** it is substantive. *McCowan v. Equitable Life Assurance Soc'y*, 116 Colo. 78, 179 P.2d 275 (1947).

**When one-year period in phrase "first policy year of any life insurance policy" begins.** By the terms of this section, the one-year period in the phrase "first policy year of any life insurance policy" begins as of the date of the initial coverage of the instrument of indebtedness and not as of the date of extension or renewal of such indebtedness. *Ownbey v. General United Life Ins. Co.*, 34 Colo. App. 33, 524 P.2d 636 (1974).

**Effect of reinstatement of policy.** Where the policyholder is reinstated by the payment of an overdue premium it does not create a new contract but in effect restores the old, therefore not giving the insurance company the defense of suicide within the first policy year. *Business Men's Assurance Co. of Am. v. Scott*, 17 F.2d 4 (8th Cir. 1927).

**Section does not apply to fraternal benefit societies.** This section so far as life insurance is concerned, directs its provisions to the policies of "any life insurance company". However, neither the "suicide" provision, nor any sections of this title, designate its application to fraternal benefit societies. *Neighbors of Woodcraft v. Westover*, 99 Colo. 231, 61 P.2d 585 (1936).

## II. SUICIDE AS A DEFENSE.

### A. To Suit on Life Policy.

**Annotator's note.** A case relevant to § 10-7-109 decided prior to its earliest source, L. 13, p. 358, § 59, has been included in the annotations to this section.

**This section eliminates from consideration any defense upon the ground of suicide**, which otherwise might have been asserted. It is constitutional and insurance companies doing business in this state are subject to its provisions. *Weber v. Head Camp, Pac. Jurisdiction, Woodmen of the World*, 60 Colo. 529, 154 P. 728 (1916).

**This section applies to an action on a life policy.** It is directed against suicide as a defense to an action on a life policy in all cases, without regard to the character or class of the insurer. *Head Camp Woodmen of the World v. Sloss*, 49 Colo. 177, 112 P. 49 (1910).

**Whether issued by a life or accident company.** This section applies to life insurance policies, whether issued by a life insurance company or by an accident insurance company. *Massachusetts Protective Ass'n v. Daugherty*, 87 Colo. 469, 288 P. 888 (1930).

**An accident insurance company which writes policies providing for death benefits is a life insurance company** as that term is used in this section. *Officer v. London Guarantee & Accident Co.*, 74 Colo. 217, 220 P. 499 (1923), distinguishing *Midland Cas. Co. v. Frame*, 67 Colo. 179, 185 P. 656 (1919); *Union Health & Accident Co. v. Welch*, 71 Colo. 374, 206 P. 790 (1922).

**There is no exception for any kind of company.** The statute is clear and specific, and is capable of but one rational construction, namely, that it was the intent and purpose of the general assembly to prevent all companies, of whatsoever kind or character, issuing life insurance contracts, from escaping payment thereon in the event of death, simply on the ground that the insured committed suicide. There is no exception in behalf of any particular kind of company, either expressed or implied, and manifestly none was intended. *Head Camp Woodmen of the World v. Sloss*, 49 Colo. 177, 112 P. 49 (1910).

**This section becomes a constituent part of the contract**, and, after the prescribed lapse of time, the defense of suicide is denied. *Aetna Life Ins. Co. v. Braukman*, 70 F.2d 647 (10th Cir 1934).

**This section cannot be waived or abrogated or set aside by agreement of the parties.** Under the provisions of this section, suicide of the insured is no defense against the payment of a life policy, and the statute can neither be waived nor abrogated by any plan or device whatsoever; neither can it be set aside by private agreement of the parties. *Officer v. London Guarantee & Accident Co.*, 74 Colo. 217, 220 P. 499 (1923); *London Guarantee & Accident Co. v. Officer*, 78 441, 242 P. 989 (1925); *Capitol Life Ins. Co. v. Di Iulio*, 98 Colo. 116, 53 P.2d 1183 (1935).

### B. To Suit on Accident Policy.

**In suit on accident insurance, insured must still show death is an accident.** While this



section makes absolutely void all stipulations exempting liability on account of suicide and all defenses bottomed on the fact of suicide, yet it nowhere relieves the plaintiff in an action upon a policy of accident insurance from making proof that the death of the assured was caused by an accident. *Capitol Life Ins. Co. v. Di Iullo*, 98 Colo. 116, 53 P.2d 1183 (1935).

**Where a person commits suicide while insane, the death is an accident.** *Massachusetts Protective Ass'n v. Daugherty*, 87 Colo. 469, 288 P. 888 (1930); *Mutual Benefit Health & Accident Ass'n v. Baldrige*, 70 F.2d 236 (10th Cir. 1934); *Capitol Life Ins. Co. v. Di Iullo*, 98 Colo. 116, 53 P.2d 1183 (1935).

**The mental derangement which, in the case of one charged with crime, supports the defense of insanity, if found to exist in the insured in an accident policy covering death, will, when the insured has taken his own life while so deranged, make the suicide an accident under this section and decisions.** *London Guarantee & Accident Co. v. Officer*, 78 Colo. 441, 242 P. 989 (1925).

**Suicide by the insured while sane is not an accident.** *Capitol Life Ins. Co. v. Di Iullo*, 98 Colo. 116, 53 P.2d 1183 (1935).

**In such case this section does not apply.** It is held that this section does not apply where a policy provides for the payment of money upon the accidental death of the insured and the insured commits suicide while sane. *Occidental Life Ins. Co. v. United States Nat'l Bank*, 98 Colo. 126, 53 P.2d 1180 (1935).

**General assembly cannot prevent insurance companies from limiting accident risks.** The general assembly has no power to, and courts cannot, compel an insurance company to write a policy or prevent it from limiting a policy to any specific accident or class of accidents. It may cover or exclude death by any means. *New York Life Ins. Co. v. West*, 102 Colo. 591, 82 P.2d 754 (1938); *Vann v. Union Cent. Life Ins. Co.*, 140 F.2d 611 (10th Cir. 1944).

**The 1935 amendment, exempting from the application of this section policies insuring against accidental death, is not retroactive.** The section as it formerly stood having become a part of policies issued while it was in force, if

the general assembly in passing the 1935 act intended it to apply to policies already issued, the act would violate both the state and the federal constitutions, which prohibit legislation impairing the obligation of contracts. *McCowan v. Equitable Life Assurance Soc'y*, 116 Colo. 78, 179 P.2d 275 (1947).

**Beneficiary must prove accident when suicide is alleged by insurer.** When death by accident is challenged and suicide is alleged, the beneficiary has the burden of proving by a preponderance of the evidence that the death was the result of accident rather than suicide. *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972).

**Burden of proof.** Where the insurance company is not defending on the basis of a policy exclusion but on the basis that there was no accidental death so that there can be no double recovery, it is not enough for plaintiff to prove death; she must prove accidental death to the exclusion of suicide by a preponderance of the evidence. *Capitol Life Ins. Co. v. Roth*, 191 Colo. 289, 553 P.2d 390 (1976).

**Resolution of issue is for jury if suicide not conclusively established.** When the evidence, taken as a whole and fairly construed, does not conclusively establish suicide, the resolution of the issue is properly for the jury. *Lockwood v. Travelers Ins. Co.*, 179 Colo. 103, 498 P.2d 947 (1972).

#### C. Conflict of Laws.

**The validity of insurance policies are based on the place of making.** *Michael v. John Hancock Mut. Life Ins. Co.*, 138 Colo. 450, 334 P.2d 1090 (1959).

**Unless intent of parties to have it performed elsewhere existed at creation.** Where an accident contract containing an exemption clause as to suicide was entered into in Wyoming, where such clause was valid, in the event of suicide by the insured while insane, the beneficiary in Colorado cannot bar the defense of suicide by the insurer under this section unless the intent of the parties to the contract to have it performed in Colorado existed at the time the contract was made. *Mutual Benefit Health & Accident Ass'n v. Baldrige*, 70 F.2d 236 (10th Cir. 1934).

**10-7-110. Minor's capacity to contract for life insurance and annuities and to exercise rights concerning same. (Repealed)**

**Source:** L. 65: p. 756, § 1. C.R.S. 1963: § 72-1-55. L. 77: Entire section repealed, p. 519, § 1, effective March 26.

**10-7-111. Minor's capacity to give acquittances for insurance or annuity payments. (Repealed)**

**Source:** L. 65: p. 757, § 2. C.R.S. 1963: § 72-1-56. L. 77: Entire section repealed, p. 519, § 1, effective March 26.

**10-7-112. Interest payable on benefits or proceeds.** (1) Notwithstanding any other provision of law, each insurer admitted to transact the business of life insurance in this state shall pay interest on the death benefits using an interest rate that is not less than the rate of interest for proceeds left on deposit with the insurer and subject to withdrawal on demand for the period beginning at the date of death through thirty days following the date of receipt by the insurer of a complete request for payout including due proof of death. From that date until the date of settlement of the claim, the annual rate of interest shall be two percentage points above the federal discount rate, which rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security and shall be rounded to the nearest full percent. If the claim is denied and a judgment is rendered against the insurer, the annual rate of interest from the date the action was filed until payment of the claim shall be four percentage points above the federal discount rate, except to the extent such proceeds were deposited with the court in an interpleader action. Any other life insurance policy or contract benefits shall accrue interest at a rate of at least two percentage points above the federal discount rate when any such benefits are not paid more than thirty days after the date of receipt by an insurer of a complete request for payment from an insured. The rates referred to in this subsection (1) shall be determined using a weighted average of the rates in effect during the applicable period based upon the number of days the rate was in effect.

(2) This section shall not require the payment of interest in any case in which the beneficiary elects in writing, delivered to the insurer, to receive the proceeds of the policy by any means other than a lump sum payment thereof.

(3) Nothing in this section shall be construed to allow any insurer admitted to transact the business of life insurance in this state to withhold payment of benefits under a life insurance policy to any beneficiary for a period longer than reasonably necessary to make such payment.

(4) For the purposes of this section, the term "life insurance" shall include:

(a) All individual and group life insurance policies issued in accordance with the provisions of this article;

(b) Life insurance plans issued in connection with part 6 of article 50 of title 24, C.R.S.;

(c) Life insurance policies issued in accordance with the provisions of article 9 of this title;

(d) Life insurance policies or certificates issued in accordance with the provisions of article 10 of this title;

(e) Life insurance benefits payable under accident only type policies; and

(f) Life insurance policies or certificates issued by fraternal benefit societies licensed to do business in this state under article 14 of this title.

**Source:** L. 83: Entire section added, p. 459, § 1, effective July 1. L. 92: (1) amended, p. 1564, § 75, effective May 20. L. 94: (4)(b) amended, p. 1136, § 3, effective May 19. L. 99: (1) amended, p. 1006, § 1, effective August 4.

**10-7-113. Acceleration of benefits.** (1) Any policy of life or endowment insurance or annuity contract or contract supplemental thereto may contain benefits providing for the acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured:

(a) Who is diagnosed with a terminal case of AIDS, as defined in section 10-3-1104.5 (2) (a), or with any other terminal illness, for health care expenses or for long-term care which is certified or ordered by a physician; or

(b) Upon the occurrence of a qualifying event, as defined by the policy or contract.

(2) For the purposes of this section, "long-term care" shall include but need not be limited to hospice care, adult day care, professional nursing care, medical care expenses, custodial nursing care, and nonnursing custodial care provided in a nursing home or at a residence of the insured.

(3) The commissioner may request filing, for information purposes, the premium rates or discount rates applied to an acceleration of life insurance or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured.



**Source:** L. 89: Entire section added, p. 449, § 5, effective April 15. L. 90: Entire section amended, p. 621, § 1, effective March 22.

**10-7-114. Actuarial opinion of reserves.** (1) (a) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of the opinion required by this section and add any other items deemed to be necessary to its scope.

(b) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(c) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by regulation prescribe.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For purposes of this section, "qualified actuary" means a person who:

(I) Is a member in good standing of the American academy of actuaries, or is experienced, skilled, competent to perform actuarial duties, and meets the requirements set forth by regulation of the commissioner; and

(II) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American academy of actuaries qualification standards for actuaries signing such statements; and

(III) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(IV) Has not been found by the commissioner, upon appropriate notice and hearing, or, if so found, has been reinstated as a qualified actuary, to have:

(A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary; or

(B) Been found guilty of fraudulent or dishonest practices; or

(C) Demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(D) Submitted to the commissioner, during the past five years, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this statute including standards set by the actuarial standards board; or

(E) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(V) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under subparagraph (IV) of this paragraph (e).

(f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person other than the insurance company and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated pursuant to this section; except that the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or, upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings, to the American academy of actuaries. The commissioner shall require that any such request from the American academy of actuaries set forth procedures satisfactory to the commis-

sioner for preserving the confidentiality of the memorandum or other material. Once any portion of a confidential memorandum prepared for purposes of this section is cited by an insurer in its marketing or is cited before any governmental agency other than a state insurance regulatory authority or is released by the insurer to any news media, the confidentiality of all such portions of any such confidential memorandum shall be deemed to be waived.

(2) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (1) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) Each opinion required by subsection (2) of this section shall be subject to the following requirements:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion for each year on or after December 31, 1992.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulation or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

**Source: L. 92:** Entire section added, p. 1494, § 23, effective July 1.

**10-7-115. Insurable interest - 170 (c) organizations.** Notwithstanding any other provision of law, any organization that meets the requirements of section 170 (c) of the federal "Internal Revenue Code of 1986", as amended, may own or purchase life insurance on an insured who gives written consent to the ownership or purchase of that insurance. The provisions of this section do not limit or abridge any insurable interest or right to insure now existing at common law or by statute, shall be construed liberally to sustain the existence of an insurable interest, and shall stand as a declaration of existing law applicable to all life insurance policies whenever issued, in existence on or after March 20, 1992.

**Source: L. 92:** Entire section added, p. 1760, § 1, effective March 20.

**Editor's note:** This section was originally numbered as § 10-7-114 by House Bill 92-1031 but was renumbered on revision for ease of location.

**10-7-116. Military sales - rules.** The commissioner shall promulgate rules, consistent with federal law, to define dishonest, unfair, and deceptive marketing and sales practices to military personnel and their families. The rules shall not affect federal insurance programs under 38 U.S.C. sec. 1965 et seq.

**Source: L. 2007:** Entire section added, p. 1990, § 1, effective August 3.



## PART 2

## GROUP LIFE INSURANCE

**10-7-201. Group life insurance.** (1) No policy of group life insurance shall be delivered in this state unless:

(a) The policyholder was formed for purposes other than obtaining insurance, or is a trust established by one or more employers or by one or more labor unions, or by one or more employers and one or more labor unions; and

(b) (Deleted by amendment, L. 2010, (HB 10-1203), ch. 47, p. 177, § 1, effective March 29, 2010.)

(c) An individual eligible for coverage is subject to such uniformly applied standards of insurability as may be imposed by the insurer.

(d) Repealed.

(2) Insurance under any group life insurance policy may be extended to insure dependents.

(3) Repealed.

**Source:** L. 19: p. 441, § 1. C.L. § 2594. L. 29: p. 388, § 1. CSA: C. 87, § 164. L. 47: p. 580, § 1. L. 53: p. 373, §§ 1, 2. CRS 53: § 72-6-1. L. 55: p. 459, § 1. L. 59: p. 509, § 1. C.R.S. 1963: § 72-6-1. L. 65: p. 766, § 1. L. 67: pp. 164, 165, 174, 184, §§ 1-4, 1, 1. L. 73: p. 850, § 1. L. 77: (1)(f) amended, p. 520, § 1, effective May 14; entire section R&RE, p. 521, § 1, effective July 1. L. 79: (3) repealed, p. 393, § 1, effective May 25. L. 83: (1)(d) repealed, p. 463, § 2, effective March 16. L. 2010: (1) amended, (HB 10-1203), ch. 47, p. 177, § 1, effective March 29.

**Editor's note:** Subsection (1)(f) was amended in House Bill 77-1232. Those amendments were superseded by the repeal and reenactment of the section in House Bill 77-1445.

**10-7-202. Policy provisions.** (1) No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the certificate owners, or at least as favorable to the certificate owners and more favorable to the policyholder; except that paragraphs (f) to (j) of this subsection (1) shall not apply to policies issued to a creditor to insure debtors of such creditor; that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and that, if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision which in the opinion of the commissioner is equitable to the certificate owners and to the policyholder, but nothing in this section shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

(a) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

(b) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him;

(c) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the

persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the certificate owner, to his assignee, or to his beneficiary;

(d) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage;

(e) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured is misstated, such provision to contain a clear statement of the method of adjustment to be used;

(f) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the certificate owner, subject to the provisions of the policy and in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five thousand dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred verifiable funeral expenses or other verifiable expenses when such expenses are incident to the last illness or death of the person insured;

(g) A provision that the insurer will issue to the policyholder for delivery to the certificate owner an individual certificate setting forth a statement as to the insurance protection provided, to whom the insurance benefits are payable, and the rights and conditions set forth in paragraphs (h), (i), and (j) of this subsection (1);

(h) A provision that, if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class eligible for coverage under the policy, the certificate owner shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits; except that application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and except that:

(I) The individual policy, at the option of the certificate owner, shall be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(II) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination; except that any amount of insurance which has matured as an endowment, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(III) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the insured person then belongs, and to his age attained on the effective date of the individual policy;

(i) A provision that, if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, the owner of each certificate with respect to a person insured thereunder whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by paragraph (h) of this subsection (1); except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and two thousand dollars;

(j) A provision that, if a person insured under the group policy dies during the period within which the certificate owner would have been entitled to have an individual policy issued to him in accordance with paragraph (h) or (i) of this subsection (1) and before such an individual policy has become effective, the amount of life insurance which the certificate



owner would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(2) The provisions of paragraphs (h) to (j) of subsection (1) of this section shall apply to any insurance issued pursuant to section 10-7-201 on the life of a spouse of an employee or member.

**Source:** L. 19: p. 441, § 2. C.L. § 2595. CSA: C. 87, § 165. L. 47: p. 584, § 2. CRS 53: § 72-6-2. C.R.S. 1963: § 72-6-2. L. 67: p. 174, § 2. L. 77: (2) amended, p. 522, § 2, effective July 1. L. 83: IP(1), (1)(c), and (1)(f) to (1)(j) amended, p. 461, § 1, effective July 1. L. 85: (1)(f) amended, p. 386, § 1, effective July 1.

#### ANNOTATION

**Where the final group policy is not issued at the time of an employee's death**, but is ultimately issued subsequent thereto, the rights of the parties are governed by the terms of the orally agreed temporary insurance, if such insurance was in existence at the time of the employee's death. *Wells v. Connecticut Gen. Life Ins. Co.*, 469 F.2d 1231 (10th Cir. 1972).

**If terms of group and individual policy are similar, then they are continuing contract.** If the terms of an individual life insurance policy are the same as those of a group life insurance policy or if the terms of the individual policy are in accord with the provisions of the conversion

clause in the group policy, then the individual policy and the group policy would be deemed a single, continuing, contract to the end that the individual policy would commence to run as the date of issuance of the group policy; however, if the terms of the individual policy differ from the terms of the group policy and are not in accord with the provisions of the conversion clause in the group policy, then the individual policy is separate and distinct from the group policy to the end that the individual policy would commence to run from the date of issuance of the individual policy. *Binkley v. Manufacturers Life Ins. Co.*, 471 F.2d 889 (10th Cir. 1973).

**10-7-203. Employer defined.** The term "employer" as used in sections 10-7-201 and 10-7-202 includes counties, cities, cities and counties, incorporated towns, school districts, and other political subdivisions of this state; and such subdivisions, in order to promote the better efficiency of its employees, may insure its employees, or any class thereof, under a policy of group insurance covering life, health, or accident insurance for such employees and may pay, or authorize to be paid, out of the corporate revenue of such political subdivisions the premiums required from time to time to maintain such group insurance in force; and, if such employees are required to contribute to the cost of their insurance, deductions for this purpose may be made from their salaries.

**Source:** L. 47: p. 587, § 3. CSA: C. 87, § 165 (1). CRS 53: § 72-6-3. C.R.S. 1963: § 72-6-3.

**10-7-204. Reciprocal provisions.** Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain any provision required by the law of the state or territory or district of the United States under which the company is organized. Any group policy may be issued or delivered in this state which in the opinion of the commissioner contains provisions on any one or more of the several foregoing requirements more favorable to the employer or to the employee than required prior to April 4, 1919. Policies issued in other states or countries by companies organized in this state may contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in this part 2 to the contrary notwithstanding.

**Source:** L. 19: p. 443, § 3. C.L. § 2596. CSA: C. 87, § 166. CRS 53: § 72-6-4. C.R.S. 1963: § 72-6-4.

**10-7-205. Exemption from execution.** No policy of group insurance, nor the proceeds thereof, when paid to any employee thereunder, shall be liable to attachment, garnishment,

or other process, or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment, nor shall the proceeds thereof, where not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts.

**Source:** L. 19: p. 443, § 4. C.L. § 2597. CSA: C. 87, § 167. CRS 53: § 72-6-5. C.R.S. 1963: § 72-6-5.

**Cross references:** For property and earnings exempt from execution, see article 54 of title 13.

### ANNOTATION

**A named beneficiary of a group life insurance policy is entitled to exempt the policy proceeds under this section.** This section provides an exemption pursuant to which a named beneficiary may claim an exemption in the pro-

ceeds of a policy of group life insurance, as against the debts of the insured or of the beneficiary himself or herself. In re Fahey, 352 B.R. 288 (Bankr. D. Colo. 2006).

**10-7-206. Issuance and valuation of policies - annual statement.** (1) Any life insurance company may issue life or endowment insurance, with or without annuities, upon the group plan, as defined in section 10-7-201, with special rates of premiums less than the usual rates of premiums for such policies. Group policies issued prior to the operative date of the "Standard Nonforfeiture and Valuation Act" may be valued on any accepted table of mortality and interest assumption adopted by the company for that purpose, but in no case shall the standard for any such policy be lower than the medico-actuarial table of mortality, or such other table of mortality as may be approved by the commissioner, with interest assumption at three and one-half percent. Group policies issued on or after the operative date of the "Standard Nonforfeiture and Valuation Act" shall be valued in accordance with the provisions of sections 10-7-309 to 10-7-313.

(2) All policies of group insurance shall be segregated by the company into separate classes, the mortality experience kept separate, and the number of policies, amount of insurance, reserves, premiums, and payments to the policyholders thereunder, together with the mortality table and interest assumption adopted by the company, shall be reported separately in the company's annual financial statement.

**Source:** L. 19: p. 444, § 5. C.L. § 2598. CSA: C. 87, § 168. L. 45: p. 416, § 3. CRS 53: § 72-6-6. L. 61: p. 465, § 12. C.R.S. 1963: § 72-6-6.

**10-7-207. Assignment.** Nothing in this title or in any other law shall be construed to prohibit any person insured under a group life insurance policy from making an assignment of all or any part of his incidents of ownership under such policy, including, but not limited to, the privilege to have issued to him an individual policy of life insurance pursuant and subject to the provisions of section 10-7-202 and the right to name a beneficiary. Subject to the terms of the policy or agreement between the insured, the group policyholder, and the insurer, relating to assignment of incidents of ownership thereunder, such an assignment by an insured is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment.

**Source:** L. 71: p. 721, § 1. C.R.S. 1963: § 72-6-7.

### PART 3

#### STANDARD NONFORFEITURE AND VALUATION ACT

**10-7-301. Short title.** This part 3 shall be known and may be cited as the "Standard Nonforfeiture and Valuation Act".



**Source:** L. 61: p. 460, § 1. CRS 53: § 72-20-1. C.R.S. 1963: § 72-19-1.

**10-7-302. Compulsory policy provisions.** (1) On and after the operative date of this part 3, no policy of life insurance, except as stated in section 10-7-307, shall be delivered or issued for delivery in this state by any foreign or domestic life insurance company unless it contains in substance the following provisions or corresponding provisions which, upon findings of fact by the commissioner, are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this section, and are essentially in compliance with section 10-7-306.1:

(a) That, in the event of default in any premium payment after premiums have been paid for at least one full year, the company will grant, upon proper election and notice thereof to the company not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this part 3. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part 3;

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(d) That, if the policy becomes paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be specified in this part 3;

(e) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance laws of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy;

(g) A notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within fifteen days of its delivery and to have any premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason and, in the case of a variable life insurance policy, the amount refunded shall be the account value calculated as of the date the policy is returned plus any policy fee or charge deducted from the policy. Any refund made pursuant to this paragraph (g) shall be paid directly to the policyholder by the insurer in a timely manner.

(2) Any of the foregoing provisions or portions of this section not applicable by reason of the plan of insurance, to the extent inapplicable, may be omitted from the policy.

(3) The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

**Source:** L. 61: p. 460, § 2. CRS 53: § 72-20-2. C.R.S. 1963: § 72-19-2. L. 77: (1)(f) R&RE and (2) amended, p. 523, §§ 1, 2, effective July 1. L. 81: IP(1), (1)(a), and (1)(e) amended, p. 542, § 1, effective July 1. L. 92: (1)(g) added, p. 1564, § 76, effective May 20. L. 99: (1)(g) amended, p. 1007, § 2, effective August 4.

**Cross references:** For the operative date of this part 3, see § 10-7-315.

**10-7-303. Computation of cash surrender value.** (1) (a) Except as provided in paragraphs (b) and (c) of this subsection (1), any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 10-7-302, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(I) The then present value of the adjusted premiums, as defined in sections 10-7-305 and 10-7-305.1, corresponding to premiums which would have fallen due on and after such anniversary; and

(II) The amount of any indebtedness to the company on the policy.

(b) For any policy issued on or after the operative date of section 10-7-305.1 which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in paragraph (a) of this subsection (1) shall be an amount not less than the sum of the cash surrender value as defined in said paragraph (a) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in said paragraph (a) for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

(c) For any family policy issued on or after the operative date of section 10-7-305.1 which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches age seventy-one, the cash surrender value referred to in paragraph (a) of this subsection (1) shall be an amount not less than the sum of the cash surrender value as defined in said paragraph (a) for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in said paragraph (a) for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(2) Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 10-7-302, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

**Source:** L. 61: p. 461, § 3. CRS 53: § 72-20-3. C.R.S. 1963: § 72-19-3. L. 81: Entire section amended, p. 543, § 2, effective July 1.



**10-7-304. Computation of nonforfeiture benefit.** Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part 3 in the absence of the condition that premiums shall be paid for at least a specified period.

**Source:** L. 61: p. 462, § 4. CRS 53: § 72-20-4. C.R.S. 1963: § 72-19-4.

**10-7-305. Adjusted premiums.** (1) This section shall not apply to policies issued on or after the operative date of section 10-7-305.1. Except as provided in subsection (3) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

- (a) The then present value of the future guaranteed benefits provided for by the policy;
- (b) Two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as defined in subsection (2) of this section, if the amount of insurance varies with duration of the policy;
- (c) Forty percent of the adjusted premium for the first policy year;
- (d) Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. In applying the percentages specified in paragraph (c) of this subsection (1) and this paragraph (d), no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(2) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; except that, in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(3) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision, unless such term insurance benefits are disregarded under section 10-7-306, shall be equal to: The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by the adjusted premiums for such term insurance, the two latter premiums being calculated separately and as specified in subsections (1) and (2) of this section.

(4) Except as otherwise provided in subsection (5) of this section, all adjusted premiums and present values referred to in this part 3 shall be calculated on the basis of the commissioners 1958 standard ordinary mortality table for ordinary insurance and the 1941 standard industrial mortality table for industrial insurance; except that:

(a) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured;

(b) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, in the case of ordinary insurance, the rates of mortality assumed may be not more than those shown in the commissioners 1958 extended term insurance table, and, in the case of industrial insurance, the rates of

mortality assumed may be not more than one hundred thirty percent of the rates of mortality according to the 1941 standard industrial mortality table;

(c) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner;

(d) All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Such specified rate of interest shall not exceed three and one-half percent per annum; except that a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after July 1, 1977, and except that for any single-premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used.

(5) (a) In the case of industrial policies issued on or after the operative date of this subsection (5), as defined in paragraph (b) of this subsection (5), all adjusted premiums and present values referred to in this part 3 shall be calculated on the basis of the commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Such specified rate of interest shall not exceed three and one-half percent per annum; except that a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after July 1, 1977, and except that for any single-premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used. However, in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table and except that, for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(b) After April 9, 1965, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection (5) after a specified date but before January 1, 1968. After the filing of such notice, then, upon such specified date (which shall be the operative date of this subsection (5) for such company), this subsection (5) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection (5) for such company shall be January 1, 1968.

**Source:** L. 61: p. 462, § 5. CRS 53: § 72-20-5. C.R.S. 1963: § 72-19-5. L. 65: p. 770, § 1. L. 77: (4)(a), (4)(d), and (5)(a) amended, p. 524, § 3, effective July 1. L. 81: IP(1) amended, p. 544, § 3, effective July 1.

**10-7-305.1. Adjusted premiums for new policies.** (1) (a) This section shall apply to all policies issued on or after the operative date of this section. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

(I) The then present value of the future guaranteed benefits provided for by the policy;

(II) One percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(III) One hundred twenty-five percent of the nonforfeiture net level premium as specified in subsection (2) of this section.

(b) In applying the percentage specified in subparagraph (III) of paragraph (a) of this subsection (1), no nonforfeiture net level premium shall be deemed to exceed four percent



of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(a) The sum of the then present value of the then future guaranteed benefits provided for by the policy, and the additional expense allowance, if any; over

(b) The then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:

(a) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

(b) One hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing the amount specified in paragraph (a) by the amount specified in paragraph (b) of this subsection (6) where:

(a) This paragraph (a) equals the sum of:

(I) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(II) The present value of the increase in future guaranteed benefits provided for by the policy; and where

(b) This paragraph (b) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be

calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) All adjusted premiums and present values referred to in this part 3 for all policies of ordinary insurance issued on or after the operative date of this section shall be calculated on the basis of the commissioners 1980 standard ordinary mortality table or, at the election of the company for any one or more specified plans of life insurance, on the basis of the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; for all policies of industrial insurance issued on or after the operative date of this section shall be calculated on the basis of the commissioners 1961 standard industrial mortality table; and for all policies issued in a particular calendar year on or after such operative date shall be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year, subject to the following:

(a) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by section 10-7-302, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables specified in this subsection (8).

(f) Any ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table.

(g) Any industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in this part 3, rounded to the nearer one-quarter of one percent.

(10) Notwithstanding any other provision in this article to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) On or after July 1, 1981, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which specified date shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989.



**10-7-305.2. Future premium determination - standards.** (1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on the then present estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in sections 10-7-302, 10-7-303, 10-7-304, 10-7-305, or 10-7-305.1, then:

(a) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by sections 10-7-302, 10-7-303, 10-7-304, 10-7-305, or 10-7-305.1;

(b) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this part 3, as determined by regulations promulgated by the commissioner.

**Source: L. 81:** Entire section added, p. 547, § 5, effective July 1.

**10-7-306. Calculation of values - supplemental rules.** (1) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 10-7-303 to 10-7-305.1 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the amounts used to provide such additions.

(2) Notwithstanding the provisions of section 10-7-303, additional benefits shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this part 3, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits in the following events or circumstances:

(a) In the event of death or dismemberment by accident or accidental means;

(b) In the event of total and permanent disability;

(c) As reversionary annuity or deferred reversionary annuity benefits;

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part 3 would not apply;

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child;

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits.

**Source: L. 61:** p. 464, § 6. **CRS 53:** § 72-20-6. **C.R.S. 1963:** § 72-19-6. **L. 81:** (1) amended, p. 548, § 6, effective July 1.

**10-7-306.1. Calculation of values - new policies.** (1) (a) This section, in addition to all other applicable sections of this part 3, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under a policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ, by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of:

(I) The greater of zero and the basic cash value specified in this section; and

(II) The present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(b) The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, corresponding to premiums which would have fallen due on and after such anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 10-7-303 or 10-7-305, whichever is applicable, shall be the same as are the effects specified in section 10-7-303 or 10-7-305, whichever is applicable, on the cash surrender values defined in that section. The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 10-7-305 or 10-7-305.1, whichever is applicable.

(c) Except as is required by subsection (2) of this section, such percentage:

(I) Must be the same percentage for each policy year between the second policy anniversary and the later of:

(A) The fifth policy anniversary; and

(B) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(II) Must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (I) of this paragraph (c) may apply to fewer than five consecutive policy years.

(2) No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 10-7-305 or 10-7-305.1, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value. All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other provisions of this part 3. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

(3) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 10-7-302, 10-7-303, 10-7-304, 10-7-305.1, and 10-7-306. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in section 10-7-306 shall conform with the principles of this section.

**Source: L. 81:** Entire section added, p. 548, § 7, effective July 1.

**10-7-307. Exemptions.** (1) Sections 10-7-302 to 10-7-306.1 shall not apply to any of the following:

(a) Reinsurance;

(b) Group insurance;

(c) A pure endowment;

(d) An annuity or reversionary annuity contract;

(e) Any term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(f) Any term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in sections 10-7-305 and 10-7-305.1, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and



for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(g) Any policy which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in sections 10-7-303, 10-7-304, 10-7-305, and 10-7-305.1, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor

(h) Any policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

(2) For purposes of determining the applicability of sections 10-7-302 to 10-7-306.1, the age at expiry for a joint term life insurance policy shall be the age of expiry of the oldest life.

**Source: L. 61:** p. 464, § 7. **CRS 53:** § 72-20-7. **C.R.S. 1963:** § 72-19-7. **L. 81:** Entire section R&RE, p. 549, § 8, effective July 1.

**10-7-308. Waiver prohibited.** No agreement between the company and the policyholder or applicant for insurance contrary to the provisions of sections 10-7-301 to 10-7-307, or contrary to the provisions of section 10-3-205, shall be held to waive any of such provisions.

**Source: L. 61:** p. 465, § 8. **CRS 53:** § 72-20-8. **C.R.S. 1963:** § 72-19-8.

**10-7-309. Minimum standard of valuation.** (1) Except as otherwise provided in subsection (2) of this section and in section 10-7-309.5, the minimum standard for the valuation of all policies issued by any domestic or foreign life insurance company, on or after the operative date provided in paragraph (b) of subsection (2) of this section, shall be the commissioners reserve valuation methods defined in sections 10-7-310, 10-7-310.5, and 10-7-313, five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1977, five and one-half percent interest for single-premium life insurance policies and four and one-half percent interest for all other such policies, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability or accidental death benefits in such policies: The commissioners 1958 standard ordinary mortality table, but, for any category of such policies issued on female risks, all modified net premiums and present values referred to in this part 3 may be calculated, at the option of the company, according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of section 10-7-305.1:

(I) The commissioners 1980 standard ordinary mortality table; or

(II) At the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; or

(III) Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies: The 1941 standard industrial mortality table for such policies issued prior to the operative date of section 10-7-305 (5), and for such policies issued on or after such operative date the commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(c) For individual annuity and pure endowment policies, excluding any disability and accidental death benefits in such policies: The 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) For group annuity and pure endowment policies, excluding any disability and accidental death benefits in such policies: The group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment policies;

(e) For total and permanent disability benefits in or supplementary to ordinary policies: The tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies: The 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits: Such tables as may be approved by the commissioner.

(2) (a) Except as provided in section 10-7-309.5, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection (2), as defined in paragraph (b) of this subsection (2), and for all annuities and pure endowments purchased on or after said operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in sections 10-7-310 and 10-7-310.5 and the following tables and interest rates:

(I) For individual single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest;

(II) For individual annuity and pure endowment contracts, other than single-premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single-premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(III) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts: The 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.



(b) On or after July 1, 1977, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection (2) after a specified date but before January 1, 1979, which shall be the operative date of this subsection (2) for such company, but a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this subsection (2) for such company shall be January 1, 1979.

**Source:** L. 61: p. 466, § 13. CRS 53: § 72-20-9. C.R.S. 1963: § 72-19-9. L. 65: p. 771, § 2. L. 77: IP(1) and (1)(a) amended and (2) added, p. 524, § 4, effective July 1. L. 81: IP(1), (1)(a), (1)(b), (1)(e), (1)(f), and (2)(a) amended, p. 550, § 9, effective July 1.

**Cross references:** For the operative date of this part 3, see § 10-7-315.

**10-7-309.5. Minimum standards of valuation for new policies.** (1) The calendar year statutory valuation interest rates, as defined in this section, shall be the interest rates used in determining the minimum standard for the valuation of:

(a) All life insurance policies issued in a particular calendar year, on or after the operative date of section 10-7-305.1;

(b) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(c) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(d) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) The calendar year statutory valuation interest rates ("I") shall be determined as follows, and the results rounded to the nearer one-quarter of one percent:

(a) For life insurance:

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09).$$

(b) (I) For single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03).$$

(II) In the formulas used in paragraph (a) of this subsection (2) and this paragraph (b), "R1" is the lesser of R and .09, "R2" is the greater of R and .09, "R" is the reference interest rate defined in this section, and "W" is the weighting factor defined in this section.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in paragraph (b) of this subsection (2), the formula for life insurance stated in paragraph (a) of this subsection (2) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single-premium immediate annuities stated in said paragraph (b) shall apply to annuities and guaranteed interest contracts with guarantee durations of ten years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in paragraph (b) of this subsection (2) shall apply.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single-premium immediate annuities stated in paragraph (b) of this subsection (2) shall apply.

(3) (a) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this paragraph (a) differs from the corresponding actual rate for similar policies issued in the immediately

preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year.

(b) For purposes of applying the provision of paragraph (a) of this subsection (3), the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 10-7-305.1 becomes operative.

(4) The weighting factors referred to in the formulas stated in subsection (2) of this section are given in the following tables:

(a) (I) The weighting factors for life insurance:

GUARANTEE DURATION (YEARS)	WEIGHTING FACTORS
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(II) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

(b) The weighting factor for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

.80

(c) The weighting factors for other annuities and for guaranteed interest contracts, except as stated in paragraph (b) of this subsection (4), shall be as specified in the following tables (subparagraphs (I), (II), and (III)) and according to the following rules and definitions (subparagraphs (IV), (V), and (VI)):

(I) For annuities and guaranteed interest contracts valued on an issue year basis:

GUARANTEE DURATION (YEARS)	WEIGHTING FACTORS FOR PLAN TYPE		
	A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subparagraph (I) of this paragraph (c) increased by:

PLAN TYPE		
A	B	C
.15	.25	.05

(III) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on



considerations received more than twelve months beyond the valuation date, the factors shown in subparagraph (I) or derived in subparagraph (II) of this paragraph (c) increased by:

PLAN TYPE		
A	B	C
.05	.05	.05

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) "Plan type", as used in the tables in subparagraphs (I), (II), and (III) of this paragraph (c), is defined as follows:

(A) **Plan type A:** At any time policyholder may withdraw funds only: (i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (ii) without such adjustment but in installments over five years or more; or (iii) as an immediate life annuity; or (iv) no withdrawal permitted.

(B) **Plan type B:** Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (i) with adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (ii) without such adjustment but in installments over five years or more; or (iii) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

(C) **Plan type C:** Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, "issue year basis of valuation" refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and "change in fund basis of valuation" refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(5) The "reference interest rate" referred to in subsection (2) of this section shall be defined as follows:

(a) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.;

(b) For single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.;

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) of this subsection (5), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.;

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) of this subsection (5), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.;

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.;

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in paragraph (b) of this subsection (5), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc.

(6) In the event that Moody's corporate bond yield average - monthly average corporates is no longer published by Moody's Investors Service, Inc., or in the event that the national association of insurance commissioners determines that Moody's corporate bond yield average - monthly average corporates, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

**Source:** L. 81: Entire section added, p. 552, § 10, effective July 1.

**10-7-310. Life and endowment reserves.** (1) Except as otherwise provided in sections 10-7-310.5 and 10-7-313, reserves, according to the commissioners reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of paragraph (a) of this subsection (1) over paragraph (b) of this subsection (1), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; except that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy;

(b) A net one-year term premium for such benefits provided for in the first policy year.

(1.5) For any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit, a cash surrender value, or a combination thereof in an



amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, which for the purposes of this subsection (1.5), means the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium, shall, except as otherwise provided in section 10-7-313, be the greater of the reserve as of such policy anniversary calculated as described in the introductory portion to and paragraphs (a) and (b) of subsection (1) of this section and the reserve as of such policy anniversary calculated as described in said portion and paragraphs of said subsection (1), but with:

(a) The value defined in said paragraph (a) being reduced by fifteen percent of the amount of such excess first year premium;

(b) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(c) The policy being assumed to mature on such date as an endowment; and

(d) The cash surrender value provided on such date being considered as an endowment benefit. In making the comparison the mortality and interest bases stated in sections 10-7-309 and 10-7-309.5 shall be used.

(2) Reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, group annuity and pure endowment policies purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal "Internal Revenue Code of 1986", as now or hereafter amended, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of subsection (1) of this section; except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

**Source:** L. 61: p. 467, § 14. CRS 53: § 72-20-10. C.R.S. 1963: § 72-19-10. L. 77: IP(1) and (2) amended, p. 525, § 5, effective July 1. L. 81: (1.5) added, p. 557, § 11, effective July 1. L. 2000: (2) amended, p. 1840, § 9, effective August 2.

**10-7-310.5. Individual annuity and pure endowment reserves.** (1) The provisions of this section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal "Internal Revenue Code of 1986", as now or hereafter amended.

(2) Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contracts, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

**Source:** L. 77: Entire section added, p. 526, § 6, effective July 1. L. 2000: (1) amended, p. 1840, § 10, effective August 2.

**10-7-311. Minimum aggregate reserves.** (1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after July 1, 1992, be less than the aggregate reserves calculated in accordance with the methods set forth in sections 10-7-310, 10-7-310.5, 10-7-313, and 10-7-313.5 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 10-7-114.

**Source:** L. 61: p. 468, § 15. CRS 53: § 72-20-11. C.R.S. 1963: § 72-19-11. L. 77: Entire section amended, p. 527, § 7, effective July 1. L. 81: Entire section amended, p. 557, § 12, effective July 1. L. 92: Entire section amended, p. 1497, § 24, effective July 1.

**10-7-312. Optional standards.** (1) Reserves for any category of policies or benefits as established by the commissioner may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard provided in this part 3, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(2) Any such company which at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this section; except that, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by section 10-7-114 shall not be deemed to be the adoption of a higher standard of valuation.

**Source:** L. 61: p. 468, § 16. CRS 53: § 72-20-12. C.R.S. 1963: § 72-19-12. L. 77: (1) amended, p. 527, § 8, effective July 1. L. 92: (2) amended, p. 1497, § 25, effective July 1.

**10-7-313. Minimum reserves.** (1) If in any contract year the gross premium charged by any life insurance company on any policy is less than the valuation net premium for the policy calculated by the method used in calculating the reserve thereon but using the minimum standards of mortality and rate of interest, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or the reserve calculated by the method actually used for such policy but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

(2) The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in sections 10-7-309 and 10-7-309.5; except that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit, a cash surrender value, or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in section 10-7-310, ignoring subsection (1.5) thereof. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with section 10-7-310, including subsection (1.5) thereof, and the minimum reserve calculated in accordance with this section.

**Source:** L. 61: p. 469, § 17. CRS 53: § 72-20-13. C.R.S. 1963: § 72-19-13. L. 77: Entire section amended, p. 527, § 9, effective July 1. L. 81: Entire section amended, p. 557, § 13, effective July 1.



**10-7-313.5. Minimum reserves - exceptions.** (1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then present estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in sections 10-7-310, 10-7-310.5, and 10-7-313, the reserves which are held under any such plan must:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) Be computed by a method which is consistent with the principles of this part 3, as such appropriateness and method shall be determined by regulations promulgated by the commissioner.

**Source: L. 81:** Entire section added, p. 558, § 14, effective July 1.

**10-7-313.7. Minimum standards for other coverages.** The commissioner may promulgate rules and regulations prescribing minimum standards applicable to the valuation of plans or products not otherwise included within this article and in conformance with standards as adopted by the national association of insurance commissioners.

**Source: L. 92:** Entire section added, p. 1498, § 26, effective July 1.

**10-7-314. Automatic premium loans.** Nothing in this part 3 shall be construed to prohibit the company from including in its policies a provision for automatic premium loans to prevent premium default.

**Source: L. 61:** p. 469, § 18. **CRS 53:** § 72-20-14. **C.R.S. 1963:** § 72-19-14.

**10-7-315. Operative date.** At any time after April 11, 1961, and before January 1, 1966, any company may file with the commissioner a written notice of its election to comply with the provisions of this part 3 after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this part 3 for such company) this part 3 shall become operative with respect to policies thereafter issued by such company. If a company makes no such election, the operative date of this part 3 for such company shall be January 1, 1966.

**Source: L. 61:** p. 469, § 19. **CRS 53:** § 72-20-15. **C.R.S. 1963:** § 72-19-15.

**10-7-316. Effect on existing policies.** Nothing in this part 3 shall be construed as affecting any policy issued by any company prior to the operative date provided for in section 10-7-315.

**Source: L. 61:** p. 469, § 20. **CRS 53:** § 72-20-16. **C.R.S. 1963:** § 72-19-16.

#### PART 4

#### VARIABLE CONTRACTS

**10-7-401. Sales not prohibited.** The provisions of section 10-3-1104 shall not prohibit the sale and issuance by life insurance companies of contracts providing for payments which vary directly according to investment experience in connection with the sale and issuance by such life insurance companies of other forms of life insurance and annuities as are provided for in this title.

**Source: L. 61:** p. 447, § 5. **CRS 53:** § 72-2-18. **C.R.S. 1963:** § 72-2-16.

**10-7-402. Investment contract funds - separate accounts.** (1) A domestic life insurance company may establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities and benefits incidental thereto, payable in fixed or variable amounts or both and may accumulate or hold funds paid pursuant to funding agreements or guaranteed investment contracts, subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the company.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in paragraph (c) of this subsection (1), amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies, and the investments in such separate account shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(c) Except with the approval of the commissioner and under such conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and for funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; except that, unless otherwise approved by the commissioner, that portion, if any, of the assets of such separate account equal to the company's reserve liability as provided in paragraph (c) of this subsection (1) shall be valued in accordance with the rules otherwise applicable to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. To the extent provided under the applicable contracts, that portion of the assets of any such separate account which is equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(f) No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, if such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(g) To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.



**10-7-403. Where benefits are payable in variable amounts.** Any contract providing benefits payable in variable amounts, delivered or issued for delivery in this state, shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

**Source: L. 71: p. 713, § 1. C.R.S. 1963: § 72-2-46.**

**10-7-404. Authority to issue variable contracts.** (1) No company shall deliver or issue for delivery within this state variable contracts unless it is licensed to do a life insurance or annuity business in this state and the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

- (a) The history and financial condition of the company;
- (b) The character, responsibility, and fitness of the officers and directors of the company; and
- (c) The law and regulations under which the company is authorized in the state of domicile to issue variable contracts.

(2) If the company is a subsidiary of an admitted life insurance company or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have complied with the provisions of this section if either it or the parent or the affiliated company meets the requirements of this section.

**Source: L. 71: p. 713, § 1. C.R.S. 1963: § 72-2-47.**

**10-7-405. Construction.** (1) Notwithstanding any other provision of law, the commissioner has sole authority to regulate the issuance and sale of variable contracts and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of sections 10-7-402 to 10-7-405.

(2) Except for sections 10-3-204, 10-7-102 (1) (g) to (1) (i), 10-7-202 (1) (a), 10-7-302 to 10-7-306, and 10-7-501 to 10-7-510, and, except as otherwise provided in sections 10-7-402 to 10-7-405, all pertinent provisions of this title shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or annuity contract, delivered or issued for delivery in this state, shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(3) Notwithstanding any other provision of law, the term "company" as used in sections 10-7-402 to 10-7-404 includes fraternal benefit societies licensed to do business in this state under article 14 of this title.

**Source: L. 71: p. 714, § 1. C.R.S. 1963: § 72-2-48. L. 77: (2) amended, p. 528, § 10, effective July 1.**

## PART 5

### STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES

**10-7-501. Short title.** This part 5 shall be known and may be cited as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

**Source: L. 77:** Entire part added, p. 528, § 11, effective July 1.

**10-7-502. Exemptions.** This part 5 shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal "Internal Revenue Code of 1986", as now or hereafter amended. Nor shall this part 5 apply to any premium deposit fund, variable annuity, investment annuity, immediate annuity, deferred annuity contract after annuity payments have commenced, or reversionary annuity, or to any contract delivered outside this state through an agent or other representative of the company issuing the contract.

**Source: L. 77:** Entire part added, p. 528, § 11, effective July 1. **L. 2000:** Entire section amended, p. 1840, § 11, effective August 2.

**10-7-503. Compulsory contract provisions.** (1) No contract of annuity, except as stated in section 10-7-502, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which, in the opinion of the commissioner, are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(a) That, upon cessation of payment of considerations under a contract or upon written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 10-7-505 to 10-7-508 and 10-7-509 (1);

(b) If a contract provides for a lump-sum settlement, that, upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 10-7-505, 10-7-506, 10-7-508, and 10-7-509 (1). The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand with surrender of the contract after requesting in writing and receiving approval in writing from the commissioner. The request shall address the necessity and equitability of the deferral to all policy holders.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract shall not be less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

(2) Notwithstanding subsection (1) of this section, a deferred annuity contract may provide that, if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract. A contract that does not provide cash surrender or death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of an annuity payment shall include a statement in a prominent place in the contract that such benefits are not provided.

**Source: L. 77:** Entire part added, p. 528, § 11, effective July 1. **L. 2004:** (1)(a), (1)(b), and (1)(d) amended and (2) added, p. 817, § 1, effective July 1.



**10-7-504. Minimum nonforfeiture amounts - rules.** (1) The minimum values specified in sections 10-7-505 to 10-7-508 and 10-7-509 (1) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon the following minimum nonforfeiture amounts:

(a) (I) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest authorized by subsection (3) of this section of the net considerations, as defined in subsection (2) of this section, paid prior to such time, decreased by the following:

(A) The sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest authorized by subsection (3) of this section;

(B) An annual contract charge of fifty dollars, accumulated at rates of interest authorized by subsection (3) of this section;

(C) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(II) (Deleted by amendment, L. 2004, p. 818, § 2, effective July 1, 2004.)

(b) and (c) (Deleted by amendment, L. 2004, p. 818, § 2, effective July 1, 2004.)

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be equal to eighty-seven and one-half percent of the gross considerations credited to the contract during such contract year.

(3) (a) The interest rate used to determine minimum nonforfeiture amounts shall be the lesser of the following:

(I) Three percent per annum; or

(II) If specified in the contract that the interest rate will reset, the five-year constant maturity treasury rate reported by the federal reserve as of a specified date or averaged over a period reduced by one hundred twenty-five basis points so long as:

(A) The rate is rounded to the nearest one-twentieth of one percent;

(B) The reset is specified in the contract to be no longer than fifteen months before the contract issue or redetermination date under sub-subparagraph (E) of this subparagraph (II);

(C) The resulting interest is not less than one percent;

(D) The interest rate applies for an initial period and may be redetermined for additional periods;

(E) Any redetermination date, basis, and period is stated in the contract; and

(F) The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate used at each redetermination date.

(b) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction authorized in subparagraph (II) of paragraph (a) of this subsection (3) by an additional rate not to exceed one hundred basis points to reflect the value of the equity indexed benefit. The present value of the additional reduction at the contract issue date and at each redetermination date shall not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction.

(c) The commissioner may adopt rules to implement paragraph (b) of this subsection (3) and to provide further adjustments to the minimum forfeiture amounts for contracts that provide substantive participation in an equity indexed benefit and for other contracts for which the commissioner determines adjustments are justified.

**Source:** L. 77: Entire part added, p. 529, § 11, effective July 1. L. 2003: (1)(a) amended, p. 1345, § 1, effective August 6. L. 2004: Entire section amended, p. 818, § 2, effective July 1.

**10-7-505. Computation of annuity benefit.** Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

**Source: L. 77:** Entire part added, p. 530, § 11, effective July 1.

**10-7-506. Computation of cash surrender benefit.** For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at the time of surrender. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

**Source: L. 77:** Entire part added, p. 530, § 11, effective July 1.

**10-7-507. Computation of paid-up annuity nonforfeiture benefit.** (1) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract.

(2) For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at the time of the insured's death.

**Source: L. 77:** Entire part added, p. 530, § 11, effective July 1.

**10-7-508. Determination of maturity date.** For the purpose of determining the benefits calculated under sections 10-7-506 and 10-7-507, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

**Source: L. 77:** Entire part added, p. 531, § 11, effective July 1.

**10-7-509. Calculations of values - supplemental rules.** (1) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(2) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the



minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sections 10-7-505 to 10-7-508 and subsection (1) of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts and paid-up annuity, cash surrender, and death benefits that may be required by this part 5. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts and paid-up annuity, cash surrender, and death benefits.

**Source: L. 77:** Entire part added, p. 531, § 11, effective July 1.

**10-7-510. Effective date - applicability of part.** On or after July 1, 2004, a company may elect to apply this part 5 to annuity contracts on a contract form-by-contract form basis. Otherwise, this part 5 shall apply to all annuity contracts created on or after July 1, 2005, and between July 1, 2004, and July 1, 2005, this part 5 as it existed on June 30, 2004, shall apply to all other annuity contracts.

**Source: L. 77:** Entire part added, p. 531, § 11, effective July 1. **L. 2004:** Entire section amended, p. 820, § 3, effective July 1.

**10-7-511. Rule-making authority.** The commissioner may adopt rules to implement this part 5.

**Source: L. 2004:** Entire section added, p. 821, § 4, effective July 1.

## PART 6

### VIATICAL SETTLEMENTS

**10-7-601. Short title.** This part 6 shall be known and may be cited as the “Viatical Settlements Act”.

**Source: L. 2005:** Entire part added, p. 1293, § 1, effective January 1, 2006.

**10-7-602. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) “Advertising” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy pursuant to a viatical settlement contract.

(2) “Business of viatical settlements” means an activity that involves, but is not necessarily limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts.

(3) “Chronically ill”, with reference to an individual, means that the individual:

(a) Suffers from a disease or disability that prevents the individual from independently performing two or more routine but necessary activities of daily living, which activities include, without limitation, eating, toileting, transferring, bathing, dressing, or continence;

(b) Requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Has a level of disability similar to that described in paragraph (a) of this subsection (3), as determined by the federal department of health and human services.

(4) (a) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or entity that has a direct ownership in a policy that is the subject of a viatical settlement contract, and:

(I) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(II) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts or to provide stop-loss insurance.

(b) "Financing entity" does not include a nonaccredited investor.

(5) "Fraudulent viatical settlement act" includes:

(a) An act or omission by a person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or engages in, or permits its employees or agents to commit or engage in, acts including:

(I) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, financing entity, insurer, insurance producer, or other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a viatical settlement contract or policy;

(B) The underwriting of a viatical settlement contract or policy;

(C) A claim for payment or benefit pursuant to a viatical settlement contract or policy;

(D) Premiums paid on a policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or policy;

(F) The reinstatement or conversion of a policy;

(G) The solicitation, offer, effectuation, or sale of a viatical settlement contract or policy;

(H) The issuance of written evidence of a viatical settlement contract or policy; or

(I) A financing transaction;

(II) Employing any device, scheme, or artifice to defraud related to viaticated policies;

(b) In the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or agents to:

(I) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(II) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(III) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(IV) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner;

(c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, life insurance producer, insurer, insured, viator, policyowner, or other person engaged in the business of viatical settlements or insurance;

(d) Recklessly entering into, negotiating, or otherwise dealing in a viatical settlement contract, the subject of which is a policy that was obtained by presenting false information concerning a fact material to the policy, or by concealing, for the purpose of misleading another, information concerning a fact material to the policy, where the viator or the viator's agent intended to defraud the insurance company that issued the policy. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, when such disregard involves a gross deviation from acceptable standards of conduct.



(e) Attempting to commit, assist, aid or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subsection (5).

(6) "Life insurance producer" means a person licensed as a resident or nonresident insurance producer pursuant to article 2 of this title who has received qualification for life insurance coverage or a life line of coverage pursuant to section 10-2-407 (1) (a).

(7) "NAIC" means the national association of insurance commissioners or any analogous successor organization.

(8) "Person" means a natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

(9) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

(10) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in viaticated policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

(11) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed only to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(12) "Terminally ill" means having an illness or sickness that is reasonably expected to result in death in twenty-four months or less.

(13) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value is paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the policy. "Viatical settlement contract" includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the policy, or a loan secured by the cash value of a policy. "Viatical settlement contract" also includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. "Viatical settlement contract" does not mean a written agreement entered into between a viator and a person having an insurable interest in the insured's life.

(14) "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract. "Viatical settlement provider" does not include:

(a) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan;

(b) The issuer of a policy providing accelerated benefits pursuant to the policy;

(c) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, financing entity, special purpose entity, or related provider trust;

(d) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of policies for any value less than the expected death benefit;

(e) A financing entity;

(f) A special purpose entity;

(g) A related provider trust; or

(h) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal "Securities Act of 1933", as amended, who purchases a viaticated policy from a viatical settlement provider.

(15) "Viaticated policy" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(16) “Viator” means the owner of a policy who is a resident of this state and who enters or seeks to enter into a viatical settlement contract. For the purposes of this part 6, a viator is not limited to an owner of a policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners. “Viator” does not include:

- (a) A licensee as provided by this part 6, including a life insurance producer;
- (b) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal “Securities Act of 1933”, as amended;
- (c) A financing entity;
- (d) A special purpose entity; or
- (e) A related provider trust.

**Source: L. 2005:** Entire part added, p. 1293, § 1, effective January 1, 2006.

**10-7-603. Licensing.** (1) (a) No person shall act on behalf of a viator or otherwise negotiate, as defined in section 10-2-103 (7.9), viatical settlement contracts between a viator and one or more viatical settlement providers unless such person is a life insurance producer and has been licensed as a resident producer with a life line of authority in his or her home state for at least one year.

(b) Not later than thirty days after the first day of negotiating a viatical settlement on behalf of a viator, the life insurance producer shall notify the commissioner of the activity on a form prescribed by the commissioner, and shall pay an applicable fee to be determined by the commissioner by rule. Notification shall include an acknowledgment by the life insurance producer that he or she will operate in accordance with this part 6.

(c) Irrespective of the manner in which the life insurance producer is compensated, a life insurance producer is deemed to represent only the viator, and the insurer that issued the policy being viaticated shall not be responsible for any act or omission of a life insurance producer or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation from the viatical settlement provider or life insurance producer for the viatical settlement contract.

(d) Notwithstanding paragraph (a) of this subsection (1), a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider may negotiate viatical settlement contracts without having to obtain a license as a life insurance producer.

(2) (a) No person may operate as a viatical settlement provider without first obtaining a viatical settlement provider license from the commissioner.

(b) Application for a viatical settlement provider license shall be made to the commissioner on a form prescribed by the commissioner, and an application shall be accompanied by a fee to be determined by the commissioner by rule.

(c) A license may be renewed from year to year, on the anniversary date of initial issuance, upon payment of an annual renewal fee as determined by the commissioner by rule. Failure to pay the fee by the renewal date shall result in expiration of the license.

(d) The applicant for a viatical settlement provider license shall provide information on forms prescribed by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, except stockholders owning fewer than five percent of the shares of an applicant whose shares are publicly traded, and the commissioner may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member of the entity who may materially influence the entity’s conduct meets the standards of this article.

(e) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers, as applicable, under the



license, if all of those persons are named in the application and any supplements to the application.

(f) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(I) Has provided a detailed plan of operation;

(II) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license for which an application was submitted;

(III) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for the license for which an application was submitted;

(IV) If a legal entity, provides a certificate of good standing from the state of its domicile; and

(V) Has provided an anti-fraud plan that meets the requirements of this part 6.

(g) The commissioner may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless the applicant has filed with the commissioner the applicant's written, irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

(h) A viatical settlement provider shall provide to the commissioner new or revised information about officers, stockholders who own ten percent or more of the provider's stock, and all partners, directors, members, and designated employees within thirty days after the change.

**Source: L. 2005:** Entire part added, p. 1298, § 1, effective January 1, 2006.

**10-7-604. Licensure - refusal to issue - suspension - revocation - refusal to renew.**

(1) The commissioner shall refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider if the commissioner finds after compliance with subsection (3) of this section that:

(a) There was any material misrepresentation in the application for the license;

(b) The licensee or any of its officers, partners, members, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

(c) The licensee demonstrates a pattern of unreasonable payments to viators;

(d) The licensee or any of its officers, partners, members, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment or conviction has been entered by the court;

(e) The licensee has entered into any viatical settlement contract that has not been approved pursuant to this part 6;

(f) The licensee has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The licensee has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state; an accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501, or rule 144A of the federal "Securities Act of 1933", as amended; a financing entity; a special purpose entity; or a related provider trust; or

(i) The applicant or licensee or any of its officers, partners, members, or key management personnel, or any life insurance producer acting on behalf of the applicant or licensee, has violated this part 6.

(2) The commissioner may suspend, revoke, or refuse to renew the license of a life insurance producer if the commissioner finds that such life insurance producer has violated this part 6.

(3) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider, or suspends, revokes, or refuses to renew

the license of a life insurance producer, the commissioner shall conduct a hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and may use a hearing officer pursuant to section 10-1-127.

**Source: L. 2005:** Entire part added, p. 1300, § 1, effective January 1, 2006.

**10-7-605. Forms approval.** A person may not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless such contract or form is first filed with and approved by the commissioner. Any settlement contract form or disclosure form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty days after the filing. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained in it are unreasonable, contrary to the interests of the public, or misleading or unfair to the viator.

**Source: L. 2005:** Entire part added, p. 1301, § 1, effective January 1, 2006.

**10-7-606. Annual reports.** (1) Each viatical settlement provider shall file with the commissioner by March 1 of each year an annual statement containing such information as the commissioner prescribes by rule. This information is limited to only those transactions in which the viator is a resident of this state and does not include individual transaction data regarding the business of viatical settlements or data that compromises the privacy of personal, financial, or health information of the viator or insured.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, life insurance producer, information bureau, rating agency or company, or other person with actual knowledge of a viator or insured's identity may not disclose that identity as a viator or insured or the viator's or insured's financial or medical information to another person unless the disclosure is:

(a) (I) Necessary to effect a viatical settlement contract between the viator and a viatical settlement provider; and

(II) The viator or insured or both, as may be required, have provided prior written consent to the disclosure;

(b) Provided in response to an investigation or examination by the commissioner or another governmental officer or agency or pursuant to this article;

(c) A term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(d) Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(e) Necessary to allow the viatical settlement provider or its authorized representative to make contacts for the purpose of determining health status; or

(f) Required to purchase stop-loss coverage.

**Source: L. 2005:** Entire part added, p. 1301, § 1, effective January 1, 2006.

**10-7-607. Examinations.** (1) **Authority, scope, and scheduling of examinations.** (a) The commissioner may conduct an examination under this part 6 of a licensee as often as the commissioner in his or her sole discretion deems appropriate.

(b) For purposes of completing an examination of a licensee under this part 6, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(c) In lieu of an examination under this part 6 of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.



(2) **Record retention requirements.** (a) A person required to be licensed under this part 6 shall for five years retain copies of all:

(I) Proposed, offered, or executed contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract, whichever is later;

(II) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of moneys from the date of the transaction; and

(III) Other records and documents related to the requirements of this part 6.

(b) This section does not relieve a person of the obligation to produce the documents listed in paragraph (a) of this subsection (2) to the commissioner after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this subsection (2) shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3) **Conduct of examinations.** (a) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing the examiner as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiner's handbook adopted by the NAIC. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every licensee or person from whom information is sought, and its officers, directors, and agents, shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(c) The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(d) When making an examination under this part 6, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The reasonable cost of such examiners' services shall be borne by the licensee that is the subject of the examination.

(e) Nothing contained in this part 6 shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in this part 6 shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in his or her sole discretion, deem appropriate.

(g) The licensee shall pay the charges incurred in the examination, including the expenses of the commissioner or the commissioner's designee and the expenses and

compensation of the commissioner's examiners and assistants. If a licensee believes that the fees assessed are unreasonable in relation to the examination performed, the licensee may appeal the assessments to and seek judicial review by the district court in and for the city and county of Denver pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If no hearing is requested or, if after a hearing and appeal process, the licensee refuses or fails to pay, the commissioner or his designee shall promptly institute a civil action against the licensee to recover the expenses of examination.

(4) **Examination reports.** (a) Examination reports shall consist only of facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(I) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the licensee to take any action the commissioner considers necessary and appropriate to cure the violation.

(II) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and refiling; or

(III) Calling for an investigatory hearing with no less than twenty days' notice to the licensee for purposes of obtaining additional documentation, data, information, and testimony.

(d) All orders entered pursuant to this subsection (4) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, the relevant examiner workpapers, and any written submissions or rebuttals. Any examination warrant issued pursuant to paragraph (a) of subsection (3) of this section shall be considered a final administrative decision, review of which may be sought in the district court in and for the city and county of Denver pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and shall be served upon the licensee by certified mail together with a copy of the adopted examination report. Within thirty days after the issuance of the adopted report, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(e) Hearings conducted pursuant to this section shall be subject to the following requirements:

(I) Any hearing conducted pursuant to this section by the commissioner or the commissioner's authorized representative shall be conducted as a nonadversarial, confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the licensee. Within twenty days after the conclusion of any hearing, the commissioner shall enter an order pursuant to subparagraph (I) of paragraph (c) of this subsection (4).

(II) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously, with discovery by the licensee limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may



issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation, whether under the control of the commissioner, the company, or other persons. The documents produced shall be included in the record, and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(III) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the licensee and the division may present testimony relevant to the investigation. Cross-examination may be conducted only by the commissioner or the commissioner's representative. The licensee and the commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(f) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(g) No provision of this part 6 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, a preliminary examination report or its results, or any related matter to the insurance division of this or any other state or country, to law enforcement officials of this or any other state, or to any agency of the federal government at any time, subject to the written agreement of the recipient to hold such information confidential and to treat it in a manner consistent with this part 6.

(5) **Confidentiality of examination information.** (a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

(b) (I) Except as otherwise provided in this part 6, all examination reports, working papers, recorded information, and documents, and copies thereof, produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this part 6, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, are:

(A) Confidential by law and privileged;

(B) Not subject to article 72 of title 24, C.R.S.;

(C) Not subject to subpoena; and

(D) Not subject to discovery or admissible in evidence in any private civil action.

(II) The commissioner is authorized to use the documents, materials, or other information described in subparagraph (I) of this paragraph (b) in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(III) For the purposes of this paragraph (b), "this part 6" includes the law of another state or jurisdiction that is substantially similar to this part 6.

(c) Documents, materials, or other information, including, but not limited to, all working papers and copies thereof in the possession or control of the NAIC and its affiliates and subsidiaries are:

(I) Confidential by law and privileged;

(II) Not subject to subpoena; and

(III) Not subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this part 6, or assisting the commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) Disclosed to the NAIC or its affiliates and subsidiaries under paragraph (d) of this subsection (5) by the commissioner.

(d) The commissioner or any person that received the documents, material, or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, is permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection (5).

(e) In order to assist in the performance of the commissioner's duties, the commissioner:

(I) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection (5), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(II) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) May enter into agreements governing the sharing and use of information consistent with this subsection (5).

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (e) of this subsection (5).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection (5) shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in this part 6 shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, a preliminary examination report or its results, or any related matter to the commissioner of any other state or country, to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the person receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part 6.

(i) Nothing in this part 6 shall immunize a party who discloses information to the commissioner from disclosing that information pursuant to an independent inquiry or restrict the admissibility of such independently obtained information.

(6) **Conflict of interest.** (a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to examination under this part 6. This section shall not be construed to automatically preclude an examiner from being:

(I) A viator;

(II) An insured in a viaticated policy; or

(III) A beneficiary in an insurance policy that is proposed to be the subject of a viatical settlement contract.

(b) Notwithstanding any provision of paragraph (a) of this subsection (6) to the contrary, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under provisions of this part 6.

(7) **Cost of examinations.** The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(8) **Immunity from liability.** (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this part 6.

(b) No cause of action shall arise from, nor shall any liability be imposed against any person for, the act of communicating or delivering information or data to the commissioner, the commissioner's authorized representative, or an examiner pursuant to an examination made under this part 6, if the act of communication or delivery was performed in good faith



and without fraudulent intent or the intent to deceive. This paragraph (b) does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in paragraph (a) of this subsection (8).

(c) A person identified in paragraph (a) or (b) of this subsection (8) shall be entitled to an award of attorney fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this part 6, and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph (c), a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(9) **Investigative authority of the commissioner.** The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

**Source: L. 2005:** Entire part added, p. 1302, § 1, effective January 1, 2006.

**10-7-608. Disclosures.** (1) With each application for a viatical settlement contract, a viatical settlement provider or life insurance producer shall provide the viator with at least the following information, in a separate document signed by the viator and the viatical settlement provider or life insurance producer, no later than the time the application for the viatical settlement contract is signed by all parties:

(a) That there exist possible alternatives to a viatical settlement contract, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(b) That some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance may be sought from a professional tax advisor;

(c) That proceeds of the viatical settlement contract may be subject to the claims of creditors;

(d) That receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice may be obtained from the appropriate government agencies;

(e) That the viator has the right to rescind a viatical settlement contract before the earlier of thirty calendar days after the date upon which the viatical settlement contract is executed by all parties or fifteen calendar days after the receipt of the viatical settlement proceeds by the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within forty-five days after the end of the rescission period. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest being made to the viatical settlement provider within the rescission period.

(f) That funds must be sent to the viator within three business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the viaticated policy has been transferred and the beneficiary has been designated;

(g) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator, and that the viator may seek assistance from an independent financial adviser;

(h) The following statement: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or a life insurance producer about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other, may be disclosed as necessary to effect the viatical settlement contract between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(i) That the insured may be contacted by either the viatical settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once each month if the insured has a life expectancy of one year or less.

(2) In addition to the information described in subsection (1) of this section, the disclosure to a viator shall include distribution of a brochure, approved by the commissioner, describing the process of viatical settlements.

(3) No later than the date the viatical settlement contract is signed by all parties, the viatical settlement provider shall provide the viator with at least the following information, displayed conspicuously in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be acquired pursuant to the viatical settlement contract;

(b) The name, address, and telephone number of the viatical settlement provider;

(c) If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a viatical settlement contract, the viator shall be informed of the possible loss of coverage on the other lives under the policy and advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement contract;

(d) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy. If known, the viatical settlement provider shall also disclose the availability of additional guaranteed insurance benefits, the dollar amount of accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits.

(e) The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.

(4) If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty days after the change.

**Source: L. 2005:** Entire part added, p. 1309, § 1, effective January 1, 2006.

**10-7-609. General requirements.** (1) (a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(I) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(II) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider or insurance producer and, if the policy was issued less than two years after the date of application for a viatical settlement contract, to the insurance company that issued the policy.

(b) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider or life insurance producer not later than thirty calendar days after the date the request is postmarked. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond.

(c) Before or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, acknowledges that the viator has a full and complete understanding of the benefits of the policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness



and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(d) If a life insurance producer performs any of the activities required of the viatical settlement provider by this subsection (1), the viatical settlement provider is deemed to have fulfilled the requirements of this section.

(2) Medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating to confidentiality of medical or protected health information.

(3) A viatical settlement contract entered into in this state shall provide the viator with an unconditional right to rescind the contract before the earlier of thirty calendar days after the date when the viatical settlement contract is executed by all parties or fifteen calendar days after the receipt of the viatical settlement proceeds by the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded if repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider is made within forty-five days after the end of the rescission period.

(4) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or beneficiary directly to an independent escrow agent. If the viator erroneously provides the documents directly to the viatical settlement provider, the viatical settlement provider shall immediately notify the escrow agent and shall pay or transfer the proceeds of the viatical settlement contract into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation within three business days after the date the escrow agent receives the documents, or after the date the viatical settlement provider receives the documents. Upon payment of the viatical settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time required renders the viatical settlement contract voidable by the viator for lack of consideration until consideration is tendered to and accepted by the viator.

(6) A contact with the insured, for the purpose of determining the health status of the insured by the viatical settlement provider after the viatical settlement contract has been executed, may be made only by the licensed viatical settlement provider or its authorized representatives and is limited to once every three months for insureds with a life expectancy of more than one year, and not more than once each month for insureds with a life expectancy of one year or less. The viatical settlement provider shall explain the procedure for these contacts at the time of entry into the viatical settlement contract. The limitations provided for in this subsection (6) do not apply to a contact with an insured for reasons other than determining the insured's health status. A viatical settlement provider is responsible for the actions of his or her authorized representatives.

**Source:** L. 2005: Entire part added, p. 1311, § 1, effective January 1, 2006.

**10-7-610. Limited purchase in incontestability period.** (1) It is a violation of this part 6 for a person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the policy unless the viator certifies to the viatical settlement provider that one or more of the following conditions has been met within the two-year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered

under a group policy shall be calculated without regard to a change in insurance carriers if the coverage has been continuous and under the same group sponsorship.

(b) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions has been met within the two-year period:

(I) The viator or insured is terminally or chronically ill; or

(II) The viator or insured disposes of his or her ownership interests in a closely held corporation pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

(2) Copies of the independent evidence described in paragraph (b) of subsection (1) of this section and documents required must be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(3) If the viatical settlement provider submits to the insurer a copy of independent evidence provided for in paragraph (b) of subsection (1) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy to the viatical settlement provider, the copy is deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall respond timely to the request.

**Source: L. 2005:** Entire part added, p. 1313, § 1, effective January 1, 2006.

**10-7-611. Advertising - legislative intent.** (1) It is the intent of the general assembly that the purpose of this section is to provide a prospective viator with clear and unambiguous statements in the advertisement of a viatical settlement contract and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of a viatical settlement contract. This purpose is to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of a viatical settlement contract to assure that a product description is presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of a viatical settlement contract through the advertising media and material used by a licensee.

(2) This section applies to an advertising of a viatical settlement contract or a related product or service intended for dissemination in this state, including internet advertising viewed by a person located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(3) Each viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of an advertisement of its contracts, products, and services. An advertisement, regardless of by whom written, created, designed, or presented, is the responsibility of the licensee, as well as of the individual who created or presented the advertisement. A system of control by the licensee shall include regular notification, at least once a year, to agents and others authorized to disseminate advertisements, of the requirements and procedures for approval before the use of an advertisement not furnished by the licensee.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) (a) The information required to be disclosed pursuant to the provisions of this section may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.



(b) An advertisement may not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving the public as to the nature or extent of any benefit, loss covered, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection before consummation of the sale, or that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(c) An advertisement may not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved in writing by the insurer.

(d) An advertisement may not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(e) The words "free", "no cost", "without cost", "no additional cost", or "at no extra cost", or words of similar import may not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the payment or use other appropriate language.

(f) (I) Any testimonial, appraisal, or analysis used in an advertisement shall:

(A) Be genuine;

(B) Represent the current opinion of the author;

(C) Be applicable to the viatical settlement contract, product, or service advertised, if any; and

(D) Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of any testimonial, appraisal, analysis, or endorsement.

(II) In using any testimonial, appraisal, or analysis, the viatical settlement licensee makes as its own all the statements contained in them, and the statements are subject to all the provisions of this section.

(III) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit, directly or indirectly, other than required union scale wages, that fact must be disclosed prominently in the advertisement.

(IV) An advertisement may not state or imply that a viatical settlement contract, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the licensee or receives payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.

(V) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

(VI) An advertisement may not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(VII) An advertisement may not disparage insurers, viatical settlement providers, insurance producers, policies, services, or methods of marketing.

(VIII) The name of the viatical settlement licensee shall be identified clearly in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract must be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(IX) An advertisement may not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee if the advertisement has the capacity or tendency to mislead or deceive as to the true identity of

the licensee or to create the impression that a company other than the licensee has any responsibility for the financial obligation under a viatical settlement contract.

(X) An advertisement may not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(XI) An advertisement may state that a licensee is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that a competing licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact that state's division of insurance to find out if that state requires licensing and, if so, whether the licensee or any other company is licensed.

(XII) An advertisement may not create the impression that the viatical settlement provider or its financial condition or status; the payment of its claims; or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(XIII) The name of the actual licensee shall be stated in all of its advertisements. An advertisement may not use a trade name, group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that has the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity has any responsibility for the financial obligation of the licensee.

(XIV) An advertisement may not, directly or indirectly, create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

- (A) A licensee or its business practices or methods of operation;
- (B) The merits, desirability, or advisability of a viatical settlement contract;
- (C) Any viatical settlement contract; or
- (D) Any policy or life insurance company.

(XV) If the advertiser emphasizes the speed with which the viatical settlement contract occurs, the advertising must disclose the average time frame, from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(XVI) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

**Source: L. 2005:** Entire part added, p. 1314, § 1, effective January 1, 2006.

**10-7-612. Fraudulent acts.** (1) (a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this part 6 or investigations of suspected or actual violations of this part 6.

(c) A person in the business of viatical settlements shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(2) (a) A viatical settlement contract and an application for a viatical settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and, upon conviction, may be subject to fines or confinement in prison, or both."

(b) The lack of a statement as provided for in paragraph (a) of this subsection (2) does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(3) (a) A person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.



(b) Another person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(4) (a) No civil liability shall be imposed upon, and no cause of action shall arise from the otherwise lawful conduct of, a person who furnishes information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(I) The commissioner or the commissioner's employees, agents, or representatives;

(II) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(III) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

(IV) The NAIC, the national association of securities dealers, or the North American securities administrators association, or their employees, agents, or representatives, or another regulatory body overseeing life insurance or viatical settlement contracts; or

(V) The insurer that issued the policy covering the life of the insured.

(b) Paragraph (a) of this subsection (4) does not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (a) of this subsection (4) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in paragraph (a) of this subsection (4) is entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this part 6 and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (a) of this subsection (4).

(e) Paragraph (a) of this subsection (4) does not apply to a person's furnishing information concerning the person's own suspected, anticipated, or completed fraudulent viatical settlement acts or suspected, anticipated, or completed fraudulent insurance acts.

(5) (a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.

(b) Paragraph (a) of this subsection (5) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(I) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(II) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC; or

(III) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence pursuant to paragraph (b) of this subsection (5) does not abrogate or modify the privilege granted in paragraph (a) of this subsection (5).

(6) This part 6 does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other than the division; or

(c) Limit the powers granted elsewhere by the laws of this state to the commissioner or to an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7) (a) A viatical settlement provider shall adopt anti-fraud initiatives reasonably calculated to detect, assist in the prosecution of, and prevent fraudulent viatical settlement acts. The commissioner may order or, if a licensee requests, may grant modifications of the following initiatives as necessary to ensure an effective anti-fraud program. The modifications may be more or less restrictive than the initiatives if the modifications may reasonably be expected to accomplish the purpose of this section. Anti-fraud initiatives include:

(I) Fraud investigators, who may be viatical settlement providers or employees or independent contractors of those viatical settlement providers; and

(II) An anti-fraud plan that is submitted to the commissioner. The anti-fraud plan shall include, but not be limited to:

(A) A chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications; and

(B) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications, a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner, and a description of the plan for anti-fraud education and training of underwriters and other personnel.

(b) Anti-fraud plans submitted to the commissioner are privileged and confidential, are not public records pursuant to article 72 of title 24, C.R.S., and are not subject to discovery or subpoena in a civil or criminal action.

**Source: L. 2005:** Entire part added, p. 1317, § 1, effective January 1, 2006.

**10-7-613. Penalties.** (1) In addition to the penalties and other enforcement provisions of this part 6, if a person violates the provisions of this part 6 or any rule implementing this part 6, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders as the commissioner determines are necessary to restrain the person from committing the violation.

(2) A person damaged by the acts of a person in violation of this part 6 may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(3) The commissioner may issue a cease-and-desist order to a person who violates any provision of this part 6 or of any rule or order promulgated by, or written agreement entered into with, the commissioner pursuant to this part 6.

(4) When the commissioner finds that an activity in violation of this part 6 presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease-and-desist order reciting with particularity the facts underlying the findings. The emergency cease-and-desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease-and-desist proceedings, the emergency cease-and-desist order remains effective absent an order by a court of competent jurisdiction pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(5) In addition to the penalties and other enforcement provisions of this part 6, a person who violates this part 6 is subject to civil penalties of up to ten thousand dollars for each violation pursuant to an order of the commissioner. The commissioner's order may require a person found to be in violation of this part 6 to make restitution to a person aggrieved by violations of this part 6.

(6) (a) A person who violates a provision of this part 6 after the commissioner has issued a cease-and-desist order to the person commits a class 2 misdemeanor and, upon conviction, shall pay restitution to a person aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not instead of a fine or imprisonment.

(b) A person who violates paragraph (a) of this subsection (6), upon conviction, shall be sentenced based on the greater of the value of property, services, or other benefits



wrongfully obtained or attempted to be obtained, or the aggregate economic loss suffered by any person as a result of the violation. A person shall be fined not more than:

(I) One hundred thousand dollars or imprisoned for not more than twelve months, or both, if the value of the viatical settlement contract is more than thirty-five thousand dollars;

(II) Twenty thousand dollars or imprisoned for not more than nine months, or both, if the value of the viatical settlement contract is more than two thousand five hundred dollars but not more than thirty-five thousand dollars;

(III) Ten thousand dollars or imprisoned for not more than six months, or both, if the value of the viatical settlement contract is more than five hundred dollars but not more than two thousand five hundred dollars; or

(IV) Three thousand dollars or imprisoned for not more than three months, or both, if the value of the viatical settlement contract is five hundred dollars or less.

(c) In a prosecution under paragraph (a) of this subsection (6), the value of a viatical settlement contract within a six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. If two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in a county in which one of the offenses was committed for all of the offenses aggregated as provided by this section. The statutory limitation period does not begin to run until the insurance company or law enforcement agency is aware of the fraud, but the prosecution may not be commenced later than seven years after the act has occurred.

**Source: L. 2005:** Entire part added, p. 1320, § 1, effective January 1, 2006.

**10-7-614. Unfair trade practices.** A violation of this part 6 shall constitute an unfair trade practice pursuant to part 11 of article 3 of this title and be subject to the penalties contained in such part 11.

**Source: L. 2005:** Entire part added, p. 1322, § 1, effective January 1, 2006.

**10-7-615. Rules.** (1) The commissioner may:

(a) Promulgate rules implementing this part 6;

(b) Establish standards for evaluating the reasonableness of payments under a viatical settlement contract for a person who is terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy. If the insured is not terminally or chronically ill, a viatical settlement provider shall pay an amount greater than the cash surrender value or accelerated death benefit then available.

(c) Establish appropriate licensing requirements, fees, and standards for continued licensure for a viatical settlement provider and a fee for life insurance producers;

(d) Require a bond or other mechanism for financial accountability for a viatical settlement provider; and

(e) Adopt rules governing the relationship and responsibilities of an insurer and a viatical settlement provider, a life insurance producer, and others in the business of viatical settlements during the period of consideration or effectuation of a viatical settlement contract.

**Source: L. 2005:** Entire part added, p. 1322, § 1, effective January 1, 2006.

**10-7-616. No preemption - Colorado Securities Act - authority of division of securities.** Nothing in this part 6 preempts or otherwise limits the provisions of the "Colorado Securities Act", article 51 of title 11, C.R.S., or any rules, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commis-

sioner of securities or the commissioner of securities' designee acting pursuant to the "Colorado Securities Act". Compliance with this part 6 does not constitute compliance with any applicable provision of the "Colorado Securities Act" or any rules, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commissioner of securities or the commissioner of securities' designee acting pursuant to the "Colorado Securities Act".

**Source: L. 2005:** Entire part added, p. 1323, § 1, effective January 1, 2006.

**10-7-617. Application.** A viatical settlement provider lawfully transacting business in this state may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the commissioner not later than thirty days after publication by the commissioner of an application form for licensure of viatical settlement providers. If the publication of the application form is prior to January 1, 2006, the filing of the application shall not be later than thirty days after January 1, 2006.

**Source: L. 2005:** Entire part added, p. 1323, § 1, effective January 1, 2006.

**10-7-618. Continuation of business.** Notwithstanding any provision of this part 6 to the contrary, a person who has lawfully negotiated viatical settlement contracts between a viator and one or more viatical settlement providers for at least one year immediately prior to January 1, 2006, may continue to negotiate viatical settlements in this state for a period of one year from January 1, 2006, if such person registers with the commissioner on a form prescribed by the commissioner. Such registration form shall be published by the commissioner not later than thirty days after January 1, 2006, and shall require a person registering to evidence that he or she has lawfully negotiated viatical settlement contracts. The form shall also include an acknowledgment by such person that he or she will operate in accordance with and comply with this part 6.

**Source: L. 2005:** Entire part added, p. 1323, § 1, effective January 1, 2006.

**10-7-619. Viatical settlements cash fund - created.** All direct and indirect expenditures of the commissioner and the division in administering this part 6 shall be paid from the viatical settlements cash fund, which fund is hereby created in the state treasury. All fees collected pursuant to this part 6 shall be transmitted to the state treasurer, who shall credit them to the viatical settlements cash fund. All moneys credited to the viatical settlements cash fund shall be used as provided in this section, shall not be deposited in or transferred to the general fund of this state or to any other fund, and shall be subject to annual appropriation by the general assembly for the purpose of defraying the expenses of the commissioner and the division in administering this part 6. All interest derived from the deposit and investment of moneys in the viatical settlements cash fund shall be credited to the viatical settlements cash fund.

**Source: L. 2005:** Entire part added, p. 1323, § 1, effective January 1, 2006.

**10-7-620. Severability.** If any provision of this part 6 is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining provisions of this part 6, and to this end the provisions of this part 6 are expressly declared to be severable.

**Source: L. 2005:** Entire part added, p. 1324, § 1, effective January 1, 2006.



## PART 7

## INSURABLE INTEREST ACT

**10-7-701. Short title.** This part 7 shall be known and may be cited as the "Insurable Interest Act".

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 972, § 1, effective May 27.

**10-7-702. Definitions.** As used in this part 7, unless the context otherwise requires:

(1) "Business entity" means a legal entity, including a joint venture, partnership, corporation, limited liability company, or business trust.

(2) "Person" means any natural person, business entity, association, or trust.

(3) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

(4) "Settlor" means a person who executes a trust instrument, including a person for whom a fiduciary or agent is acting.

(5) "Stranger originated life insurance" means an act, practice, or arrangement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. Stranger originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of inception, could not lawfully initiate the policy themselves and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition on wagering on life. "Stranger originated life insurance" does not include lawful viatical settlement contracts as permitted by part 6 of this article, provided that such contracts are not for the purpose of evading regulation under this article.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 972, § 1, effective May 27.

**10-7-703. Insurance on the life of another.** A person shall not procure or cause to be procured or effected a policy upon the life of another individual unless the benefits under the policy are payable to the insured, to the personal representative of the insured's estate, or to a person having, at the time the policy is issued, an insurable interest in the individual insured.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 973, § 1, effective May 27.

**10-7-704. Insurable interest.** (1) An insurable interest, with reference to insurance on the life of another, exists only as follows:

(a) An individual has an insurable interest in the life of another person in whom the individual has a substantial interest engendered by love and affection in the continuation of the life of the insured and who are:

(I) Related within the fifth degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or marriage to the insured;

(II) Stepchildren of the insured or their descendants; or

(III) Individuals who are designated as beneficiaries of insurance policies for life insurance coverage on the life of the insured under a designated beneficiary agreement executed pursuant to article 22 of title 15, C.R.S.;

(b) An individual has an insurable interest in the life of another person if such individual has a lawful and substantial interest in the continued life of the insured, as

distinguished from an interest that would arise only from, or would be enhanced in value by, the death of the individual insured;

(c) An individual party to a contract for the purchase or sale of an interest in a business entity has an insurable interest in the life of each other individual party to the contract, but only for the purpose of carrying out the intent and purpose of the contract;

(d) A trustee of a trust has an insurable interest in the life of an insured under a life insurance policy as provided in section 15-16-501, C.R.S.;

(e) A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property and in the life of any other individual in whose life the person has an insurable interest so long as the life insurance proceeds are used primarily for the benefit of persons having an insurable interest in the life of the insured;

(f) An organization described in section 170 (c) of the federal “Internal Revenue Code of 1986”, as amended, has an insurable interest in the life of any person who consents in writing to the organization’s ownership or purchase of that insurance pursuant to section 10-7-115;

(g) A trustee, sponsor, or custodian of assets held in any plan governed by the “Employee Retirement Income Security Act of 1974”, 29 U.S.C. sec. 1001 et seq., or in any other retirement or employee benefit plan, has an insurable interest in the life of any participant in the plan, but only if consent is obtained in writing from the participant before the insurance is purchased. An employer, trustee, sponsor, or custodian may not retaliate or take adverse action against a participant who does not consent to the issuance of insurance on the participant’s life.

(h) A business entity has an insurable interest in the life of any of the owners, directors, officers, partners, or managers of the business entity or any affiliate or subsidiary of the business entity, or key employees or key persons of the business entity, affiliate, or subsidiary, but only if consent is obtained in writing from the key employees or key persons before the insurance is purchased. The business entity, affiliate, or subsidiary may not retaliate or take adverse action against any key employee or key person who does not consent to the issuance of insurance on the key employee or key person’s life. For purposes of this paragraph (h), “key employee” or “key person” means an individual whose position or compensation is described in section 101 (j) (2) (A) (ii) of the federal “Internal Revenue Code of 1986”, as amended.

(i) A financial institution or other person to whom a debt is owed, whether for the purposes of premium financing or otherwise, has an insurable interest in the life of the borrower or any of the owners, directors, officers, partners, or managers of the borrower; key employees, guarantors, or key persons of the borrower; or any of the foregoing of an affiliate or a guarantor of the borrower, but only if consent is obtained in writing from such persons before the insurance is purchased; except that such insurable interest is limited to the amount of the debt owed plus reasonable interest and service charges. The proceeds payable upon the death of an insured in excess of the total outstanding debt owed shall be paid to the estate of the individual insured.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 973, § 1, effective May 27.

**10-7-705. Insured’s own life.** An individual has an insurable interest in the individual’s own life, and an individual of competent legal capacity who procures or effects a policy on the individual’s own life may designate any person as the beneficiary and, unless the individual elects an irrevocable beneficiary designation, change the beneficiary at any time thereafter.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 975, § 1, effective May 27.

**10-7-706. Reliance on statements.** An insurer is entitled to rely upon all reasonable statements, declarations, and representations made by an applicant for life insurance relative



to the existence of an insurable interest. No insurer incurs legal liability, except as set forth in the policy, by virtue of untrue statements, declarations, or representations relied upon in good faith by the insurer.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 975, § 1, effective May 27.

**10-7-707. Consent of insured.** (1) A policy upon the life of an individual, other than a policy of noncontributory group life insurance, shall not be effected unless, at or before the time the policy is effectuated, the individual insured, having legal capacity to contract, applies for or consents in writing to the policy and its terms. Consent may be given by another person in the following cases:

- (a) A spouse may consent to insurance on the other spouse;
- (b) A parent or a person having legal custody of a minor may consent to the issuance of a policy on a dependent child;
- (c) A court-appointed guardian of a person may consent to the issuance of a policy on the person under guardianship;
- (d) A court-appointed conservator of a person's estate may consent to the issuance of a policy on the person whose estate is under conservatorship;
- (e) An attorney-in-fact may consent to the issuance of a policy on the person that appointed the attorney-in-fact for the limited purpose of replacing one or more policies with one or more new policies if, as the result of the replacement, the aggregate amount of life insurance on the person remains the same or decreases;
- (f) A trustee of a revocable trust may consent to the issuance of a policy on the life of a settlor of the trust; and
- (g) A court of general jurisdiction may give consent to the issuance of a policy upon a showing of facts that the court considers sufficient to justify the issuance of the policy.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 975, § 1, effective May 27.

**10-7-708. Prohibited practices.** (1) It is unlawful for any person to procure, or cause to be procured or effected, a policy in violation of section 10-7-703. Such conduct is an unfair or deceptive act or practice pursuant to section 10-3-1104.

(2) It is unlawful for any person to engage in stranger originated life insurance or otherwise wager on life. Such conduct is an unfair or deceptive practice pursuant to section 10-3-1104.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 976, § 1, effective May 27.

**10-7-709. Actions to recover death benefits.** If the beneficiary, assignee, or other payee received the death benefits under a life insurance policy procured or effected in violation of this article, the personal representative of the insured's estate or other lawfully acting agent may maintain an action to recover the death benefits from the person receiving them.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 976, § 1, effective May 27.

**10-7-710. Legitimate insurance transactions.** (1) Except where a life insurance policy is procured or effected in violation of section 10-7-708, nothing in this article prevents:

- (a) An owner of a policy, whether or not the owner of the policy is also the subject of the insurance, from entering into a viatical settlement contract;
- (b) Any person from soliciting a person to enter into a viatical settlement contract; or
- (c) An owner or beneficiary from enforcing the payment of all benefits and proceeds of the policy obtained under a viatical settlement contract.

**Source: L. 2011:** Entire part added, (SB 11-182), ch. 227, p. 976, § 1, effective May 27.

**COVERCOLORADO****ARTICLE 8****CoverColorado**

**Cross references:** For workers' compensation, see articles 40 to 47 of title 8; for the crime of abuse of health insurance by health care providers, see § 18-13-119; for provisions concerning health care coverage, see article 16 of this title.

<b>PART 1</b>		10-8-513.	Eligibility for coverage under program.
<b>GENERAL</b>		10-8-513.5.	Federally eligible individuals.
		10-8-514.	Deductibles - coinsurance.
10-8-101 to		10-8-514.5.	Incentives or rewards for participation in wellness and prevention programs.
10-8-126.	(Repealed)		Maximum benefit.
<b>PART 2</b>		10-8-516.	Preexisting conditions.
<b>STATE EMPLOYEES' AND OFFICIALS' GROUP INSURANCE</b>		10-8-517.	Employers of persons covered under the plan. (Repealed)
		10-8-518.	Nonduplication of benefits.
10-8-201 to		10-8-519.	Provisions of policies.
10-8-219.	(Repealed)	10-8-520.	Rules and regulations.
<b>PART 3</b>		10-8-521.	Notice to residents.
<b>REQUIRED HEALTH INSURANCE BENEFITS FOR ALCOHOLISM TREATMENT</b>		10-8-522.	Liability.
		10-8-523.	Tax exemption.
		10-8-524.	Effective date of insurance.
		10-8-525.	Benefits - availability - maximum coverage.
		10-8-526.	Expenses covered.
10-8-301.	(Repealed)	10-8-527.	Expenses excluded.
<b>PART 4</b>		10-8-528.	Other health benefit plans not excluded.
<b>REQUIRED HEALTH INSURANCE BENEFITS FOR HOME HEALTH SERVICES AND HOSPICE CARE</b>		10-8-529.	Insolvency, impairment, or dissolution.
		10-8-530.	Funding of program - rules - repeal.
10-8-401.	(Repealed)	10-8-531.	Oversight of Colorado uninsurable health insurance plan - health, environment, welfare, and institutions committees of senate and house of representatives. (Repealed)
<b>PART 5</b>			Repeal of part. (Repealed)
<b>COVERCOLORADO</b>		10-8-532.	Evaluation of ceding risk to CoverColorado - repeal. (Repealed)
10-8-501.	Short title.	10-8-533.	Tax credit for contributions to CoverColorado - allocation notice - rules.
10-8-502.	Legislative declaration.		CoverColorado long-term funding task force - members - funding plan - repeal. (Repealed)
10-8-503.	Definitions.	10-8-534.	
10-8-504.	Program - operation.		
10-8-505.	CoverColorado board of directors.	10-8-535.	
10-8-506.	Board - powers and duties.		
10-8-507.	Plan of operation - purpose - approval.		
10-8-508.	Plan of operation - contents.		
10-8-509.	Administering carrier.		
10-8-510.	Program - examination - financial report.		
10-8-511.	Review of net premium - plan deficit. (Repealed)		
10-8-512.	Premiums - standard risk rate.		
10-8-512.5.	Fee schedule - compensation of health care providers.	10-8-601 to 10-8-607.	(Repealed)

**PART 6****SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY PROGRAM ACT**



## PART 1

## GENERAL

**10-8-101 to 10-8-126. (Repealed)**

**Source: L. 92:** Entire part repealed, p. 1728, § 22, effective July 1.

**Editor's note:** This part 1 was numbered as article 10 of chapter 72, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 1 were relocated to parts 1 and 2 of article 16 of this title. For the location of specific provisions, see the editor's notes following each section in said parts 1 and 2 and the comparative tables located in the back of the index.

## PART 2

## STATE EMPLOYEES' AND OFFICIALS' GROUP INSURANCE

**10-8-201 to 10-8-219. (Repealed)**

**Source: L. 94:** Entire part repealed, p. 1137, § 4, effective May 19.

**Editor's note:** This part 2 was numbered as article 22 of chapter 72, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 2 were relocated to part 6 of article 50 of title 24. For the location of specific provisions, see the editor's notes following each section in said part 6.

## PART 3

REQUIRED HEALTH INSURANCE BENEFITS  
FOR ALCOHOLISM TREATMENT**10-8-301. (Repealed)**

**Source: L. 92:** Entire part repealed, p. 1728, § 22, effective July 1.

**Editor's note:** This part 3 was added in 1975 and was not amended prior to its repeal in 1992. For the text of this part 3 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of the volume. The provisions of this part 3 were relocated to part 1 of article 16 of this title. For the location of specific provisions, see the editor's notes following each section in said part 1 and the comparative tables located in the back of the index.

## PART 4

REQUIRED HEALTH INSURANCE BENEFITS  
FOR HOME HEALTH SERVICES AND HOSPICE CARE**10-8-401. (Repealed)**

**Source: L. 92:** Entire part repealed, p. 1728, § 22, effective July 1.

**Editor's note:** This part 4 was added in 1984. For amendments to this part 4 prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replace-

ment volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this part 4 were relocated to part 1 of article 16 of this title. For the location of specific provisions, see the editor's notes following each section in said part 1 and the comparative tables located in the back of the index.

## PART 5

### COVERCOLORADO

**10-8-501. Short title.** This part 5 shall be known and may be cited as the "Colorado High Risk Health Insurance Act". The name of the program created by this part 5 shall be "CoverColorado".

**Source:** L. 90: Entire part added, p. 628, § 1, effective July 1. L. 2001: Entire section amended, p. 1034, § 1, effective July 1.

**10-8-502. Legislative declaration.** (1) The general assembly hereby declares that the purpose of this part 5 is to provide access to health insurance for those Colorado residents who are now termed "high risk" because they are unable to obtain health insurance or unable to obtain health insurance except at prohibitive rates or with restrictive exclusions, including those who are federally eligible individuals under the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191.

(2) Further, the general assembly recognizes that the creation of an assessment mechanism in 2001 provided for more financial stability for CoverColorado, but it should not be considered the exclusive remedy for the growing financial needs of the program. Additional funding sources should be explored so that the growing financial demands of CoverColorado are not passed on to insured lives in this state.

**Source:** L. 90: Entire part added, p. 628, § 1, effective July 1. L. 2001: Entire section amended, p. 1034, § 2, effective July 1. L. 2003: Entire section amended, p. 1772, § 1, effective July 1.

**10-8-503. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "Administering carrier" means the carrier or third-party administrator designated in this part 5.

(2) Repealed.

(3) "Board" means the board of directors of the CoverColorado program.

(3.5) "Carrier" has the same meaning as set forth in section 10-16-102 (8).

(4) "Commissioner" means the commissioner of insurance or his designee.

(5) "Eligible individual" means one of the following:

(a) A resident of this state who meets the eligibility requirements set forth in section 10-8-513; or

(b) An individual who meets the eligibility requirements set forth in section 10-8-513.5.

(6) (Deleted by amendment, L. 97, p. 613, § 1, effective July 1, 1997.)

(6.8) "Group health plan" shall have the same meaning as "group health plan" as set forth in section 10-16-105.5 (1) (a).

(7) "Health care facility" means any entity providing health care services.

(7.5) "Health benefit plan" has the same meaning as set forth in section 10-16-102 (21).

(8) "Health care services" has the same meaning as set forth in section 10-16-102 (22).

(9) (Deleted by amendment, L. 97, p. 613, § 1, effective July 1, 1997.)

(10) Repealed.

(10.5) "Insurer" means any entity that provides group or individual health benefit plans, as defined in section 10-16-102 (21), subject to state insurance regulation in this state, as well as any entity that directly or indirectly provides stop-loss or excess loss insurance to a self-insured group health plan including a property and casualty insurance company.

(11) (Deleted by amendment, L. 2001, p. 1034, § 3, effective July 1, 2001.)



(12) (Deleted by amendment, L. 97, p. 613, § 1, effective July 1, 1997.)

(13) "Medicaid" means federal insurance or assistance as provided by Title XIX of the federal "Social Security Act", as amended.

(14) "Medicare" means federal insurance or assistance as provided by Title XVIII of the federal "Social Security Act", as amended.

(15) (Deleted by amendment, L. 97, p. 613, § 1, effective July 1, 1997.)

(16) (Deleted by amendment, L. 2001, p. 1034, § 3, effective July 1, 2001.)

(16.5) "Participant" means an eligible individual or eligible dependent who has been accepted into the program and who is receiving health coverage under the program.

(17) "Plan of operation" means the plan to create and operate the program, including bylaws and operating rules that are adopted by the board pursuant to this part 5.

(17.3) "Program" or "CoverColorado" means CoverColorado and its administration and implementation of the health benefit plans permitted under this part 5.

(17.5) "Qualifying previous coverage" has the same meaning as "creditable coverage" as set forth in section 10-16-102 (13.7).

(18) "Resident" means an individual whose principal or primary place of abode or residence, as defined in section 1-2-102, C.R.S., is in the state of Colorado and who has been such a resident for six months or longer.

**Source:** L. 90: Entire part added, p. 628, § 1, effective July 1. L. 92: (9) amended, p. 1725, § 9, effective July 1. L. 94: (10) amended, p. 2723, § 319, effective July 1. L. 97: (1), (5), (6), (8), (9), (11), (12), (15), and (18) amended and (3.5), (7.5), and (17.5) added, p. 613, § 1, effective July 1. L. 98: (17.5) amended, p. 817, § 9, effective August 5. L. 2001: (2), (3), (5), (11), (16), and (17) amended and (6.8), (10.5), (16.5), and (17.3) added, p. 1034, § 3, effective July 1. L. 2003: (2) and (10) repealed, p. 1842, § 1, effective May 21; (6.8) amended, p. 1987, § 19, effective May 22.

**10-8-504. Program - operation.** There is hereby created a nonprofit unincorporated public entity known as CoverColorado. The operation of the program shall be governed by the board of directors of CoverColorado created pursuant to section 10-8-505. CoverColorado is an instrumentality of the state; except that the debts and liabilities of the program shall not constitute debts and liabilities of the state, and neither the program nor the board shall be an agency of state government.

**Source:** L. 90: Entire part added, p. 630, § 1, effective July 1. L. 92: Entire section amended, p. 1503, § 2, effective April 16. L. 2001: Entire section amended, p. 1035, § 4, effective July 1.

**10-8-505. CoverColorado board of directors.** (1) There is hereby created the board of directors of CoverColorado, consisting of seven members.

(2) (a) Seven board members shall be appointed by the governor with the consent of the senate. These members shall serve for terms of four years; except that, of those members initially appointed, two shall serve for terms of two years, two shall serve for terms of three years, and two shall serve for terms of four years. The governor shall appoint a qualified person to fill any vacancy on the board for the remainder of any unexpired term. These board members shall be appointed as follows: Four shall be representatives of carriers, one of which shall be a representative of a health maintenance organization, one of which shall be a representative of a sickness and accident insurance carrier, and one of which shall be a representative of a stop-loss or excess loss insurance carrier; one shall be a member who is a medical professional who specializes in chronic disease; and two shall be members from among individuals who currently are insured or who have been insured under the program as defined in this part 5 and who are not associated with the medical profession, any hospital, or any carrier.

(b) (Deleted by amendment, L. 2001, p. 1036, § 5, effective July 1, 2001.)

(3) The commissioner or his or her designee, the state treasurer or his or her designee, and a member of the general assembly shall serve as ex officio nonvoting members of the

board. The initial appointee of the general assembly shall be a member of the senate appointed by the president of the senate, the next appointee shall be a member of the house of representatives appointed by the speaker of the house of representatives, and thereafter such appointment shall rotate in like manner between the senate and the house of representatives. The term of the commission member appointed by the speaker or the president who is serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly, and the speaker or the president, whoever is entitled to the next appointment in the rotation, shall appoint or reappoint a member as soon as practicable after such convening date. Thereafter, the terms of members appointed by the speaker or the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments or reappointments shall be made as soon as practicable after the convening date of the first regular session of each general assembly. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker or the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(4) The board shall elect one of its members to serve as chairman.

(5) Any four members of the board shall constitute a quorum for the purpose of transacting business and carrying out the provisions of this part 5.

(6) Any member of the board may be removed by the appointing authority for misconduct, incompetency, or neglect of duty.

(7) Any member of the board serving a four-year term shall not serve for more than two consecutive four-year terms, and any member of the board serving a two-year term shall not serve for more than four consecutive two-year terms.

(8) Members of the board shall serve without compensation; except that they shall be reimbursed for any actual and necessary expenses incurred in the performance of their duties under this part 5, with mileage rates not to exceed those authorized for the executive department.

**Source:** L. 90: Entire part added, p. 630, § 1, effective July 1. L. 92: (2)(a) amended, p. 1504, § 3, effective April 16. L. 97: (2)(a) amended, p. 614, § 2, effective July 1. L. 2001: (1), (2), and (3) amended, p. 1036, § 5, effective July 1. L. 2007: (3) amended, p. 175, § 3, effective March 22; (3) amended, p. 607, § 1, effective April 20.

**Editor's note:** Amendments to subsection (3) by Senate Bill 07-076 and Senate Bill 07-184 were harmonized.

**10-8-506. Board - powers and duties.** (1) The board shall be the governing body of the program and shall have all powers necessary to implement the provisions of this part 5. In addition, the board shall have the specific authority to:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part 5 including contracts with appropriate administrative staff, consultants, and legal counsel. In addition, the board shall have the authority, with the approval of the commissioner, to enter into contracts with other states with similar plans for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions. No contract entered into pursuant to this paragraph (a) shall be subject to the provisions of article 103 of title 24, C.R.S.

(b) Sue or be sued, including taking any legal actions as necessary or proper on behalf of the program;

(c) Take such legal action as necessary to avoid the payment of improper claims against the program or to defend the coverage provided by or through the program;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas, stop-loss ratios, means tests, and any other actuarial functions appropriate to the operation of the program. Rates and rate schedules may be adjusted by the board for appropriate risk factors such as age and area variation in claim costs, and the board shall take into consideration appropriate risk factors in accor-



dance with established actuarial underwriting practices. Claim reserves shall be based upon accepted actuarial practices.

(e) Establish one or more appropriate health benefit plan designs with cost-containment controls, which may include but not be limited to preadmission review, case management, utilization reviews, exclusions or limitations with respect to treatment and services including capitated managed care for certain participants, and participant deductibles. The presence, the nature, or the conduct of any such cost containment controls may not be the basis for any civil liability in any legal action whether alleging personal injury or otherwise, unless injury results from willful and wanton misconduct.

(e.3) Establish one or more coordination of benefits plan designs;

(e.5) Establish such procedures and standards for the subsidization of premiums, deductibles, and other policy expenses of qualified participants as may be appropriate to accomplish the purposes of this part 5. For the purposes of this subsidization program, the board may request the submittal of such documentation by eligible individuals as it deems necessary.

(f) Oversee the issuance of policies of insurance and certificates or evidences of coverage in accordance with the requirements of this part 5;

(g) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy development, and other contract design and in any other function within the authority of the program;

(g.5) Develop a list of medical or health conditions the existence or history of which presumptively makes an individual eligible for participation in the program without first requiring application to a carrier for health coverage;

(h) (Deleted by amendment, L. 92, p. 1504, § 4, effective April 16, 1992.)

(i) Borrow money to effect the purposes of this part 5. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for carriers and may be carried as admitted assets.

(j) Establish conditions and procedures for reinsuring risks under this part 5;

(k) (Deleted by amendment, L. 97, p. 615, § 3, effective July 1, 1997.)

(l) Assess special fees against insurers for the continuous operation of the program, as provided in section 10-8-530 (1.5);

(m) Establish procedures for the reasonable advance notice to interested parties of the agenda for meetings of the board;

(n) Accept and expend gifts, grants, and donations for operation of the program, including, without limitation, contributions received pursuant to the premium tax credit allocation provisions of section 10-8-534;

(o) Establish one or more fee schedules, in accordance with section 10-8-512.5, setting the amount that all medical, surgical, hospital, and other health care service providers will be compensated by the program for providing services covered by the program to a CoverColorado participant; and

(p) (I) Maintain enrollment consistent with and within the available financial resources of the program, in accordance with criteria and procedures established by the board and subject to applicable federal law and subparagraph (II) of this paragraph (p).

(II) Prior to implementing a limitation on new enrollment in the program pursuant to subparagraph (I) of this paragraph (p), the board shall notify the joint budget committee:

(A) In conjunction with its annual report submitted pursuant to section 10-8-530 (4) (c), of the need to limit new enrollment in the program based on projections of program enrollment and available financial resources for the program. The board shall not implement a limitation on new enrollment prior to the end of the next regular session of the general assembly following the notice submitted to the joint budget committee pursuant to this sub-subparagraph (A), unless the joint budget committee notifies the board, prior to the end of the next regular session, that additional funding for the program is unavailable; or

(B) In the case of a financial emergency or threat of insolvency that arises at any time during the fiscal year, of the immediate need to limit new enrollment in the program. The board shall not implement a limitation on new enrollment sooner than sixty days after providing notice to the joint budget committee pursuant to this sub-subparagraph (B), during which time the joint budget committee shall determine whether additional funding

will be made available to the program. The joint budget committee shall notify the board within said sixty days whether additional funding is available, and if the joint budget committee notifies the board that no additional funding is available, the board may implement the proposed limitation on new enrollment.

(2) For any act performed within the course and scope of authority under this part 5, the board, the individual members of the board, and the employees and agents of the board shall be entitled to the immunity granted pursuant to section 24-10-106, C.R.S., unless such act or omission constitutes willful and wanton misconduct.

**Source:** **L. 90:** Entire part added, p. 631, § 1, effective July 1. **L. 92:** (1)(e), (1)(h), and (2) amended, p. 1504, § 4, effective April 16. **L. 93:** (1)(d) amended, p. 1024, § 1, effective June 2. **L. 97:** (1)(a), (1)(e), (1)(f), (1)(i), and (1)(k) amended and (1)(e.5) and (1)(g.5) added, p. 615, § 3, effective July 1. **L. 2001:** (1) amended, p. 1036, § 6, effective July 1. **L. 2004:** (1)(n) amended, p. 48, § 7, effective March 4. **L. 2007:** (1)(e.3) added, p. 580, § 1, effective April 19. **L. 2010:** (1)(m) amended and (1)(o) and (1)(p) added, (SB 10-020), ch. 239, p. 1047, § 1, effective July 1.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsection (1)(n), see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-8-507. Plan of operation - purpose - approval.** (1) (a) The board shall submit a proposed plan of operation to the commissioner, which plan shall describe the operation of CoverColorado, including provisions for bylaws and operating procedures for the board.

(b) Such plan of operation shall be developed after the board has given notice to the public that it will accept written comments concerning the contents of the plan from any interested party. The board shall consider such comments when it develops the plan. Copies of any such written comments received by the board shall be transmitted to the commissioner along with the plan of operation.

(c) At the time that it submits the proposed plan of operation to the commissioner, the board shall provide a copy of the proposed plan of operation to any party who has requested a copy of such plan, together with a notice that written comments on the proposed plan may be submitted to the commissioner within thirty days.

(2) As part of his review of the proposed plan, the commissioner shall give due consideration to the written comments specified in paragraphs (b) and (c) of subsection (1) of this section. Within sixty days after his receipt of the proposed plan, the commissioner shall approve such plan of operation if he determines it will accomplish the purposes of this part 5, including operating the plan in a fair, reasonable, and equitable manner. Upon written approval by the commissioner, the plan shall become effective.

(3) (a) If the plan is not approved by the commissioner, the commissioner shall return the plan to the board with comments outlining the reasons for its rejection. The board shall have forty-five days from the date of its return to reorganize and resubmit the plan to the commissioner.

(b) If the board fails to submit a plan of operation within one hundred twenty days after the effective date of the designation of the membership of the board or if the board fails to resubmit a plan rejected by the commissioner, the commissioner shall promulgate rules and regulations necessary to implement the purposes of this part 5 after notice and public hearing as provided in section 24-4-105, C.R.S. If, however, prior to the commencement of such public hearing, the board submits a plan of operation that is approved by the commissioner using the standards specified in subsection (2) of this section, such public hearing and rule-making process shall be canceled.

(4) (a) If, at any time after approval of the initial plan of operation, the board determines that it is necessary to amend the plan of operation in order to implement the purposes of this part 5, the board may amend and modify the plan of operation utilizing the procedures specified in subsection (1) of this section.

(b) If, at any time after approval of the initial plan of operation, the commissioner determines that it is necessary to amend the plan of operation in order to implement the purposes of this part 5 and the board fails to enact such amendment or amendments within



a reasonable time after notice from the commissioner that such amendment or amendments are necessary, the commissioner shall promulgate rules and regulations necessary to amend the plan so that it implements the purposes of this part 5 after notice and public hearing as provided in section 24-4-105, C.R.S.

(5) Any rules and regulations promulgated by the commissioner pursuant to subsections (3) and (4) of this section shall continue in full force and effect until modified by the commissioner after notice and public hearing or until superseded by a plan of operation or amendment submitted by the board and approved by the commissioner pursuant to the provisions of this section.

**Source: L. 90:** Entire part added, p. 632, § 1, effective July 1. **L. 2001:** (1)(a) amended, p. 1038, § 7, effective July 1.

**10-8-508. Plan of operation - contents.** (1) The plan of operation described in section 10-8-507 shall, at a minimum, contain the following elements:

(a) Procedures for handling and accounting for the assets and moneys of the program, including records of all financial transactions and an annual fiscal report to the commissioner;

(b) Procedures for selection of an administering carrier as provided in section 10-8-509;

(c) Procedures to establish and maintain public awareness of the program, including its eligibility requirements and enrollment procedures;

(d) Procedures to ensure compliance with the notification requirement concerning availability of the program pursuant to section 10-8-521;

(e) Regular times and places for meetings of the board;

(f) Procedures under which applicants and participants can report grievances to the board, which grievances shall be fairly and impartially considered, and administrative remedies for such grievances;

(g) Any other provisions necessary to implement the purposes of this part 5.

(2) All applicants and participants reporting any grievance pursuant to paragraph (f) of subsection (1) of this section shall exhaust all administrative remedies as set forth by the board before any such grievance may be the basis for legal action. The venue for any legal action involving the program shall be the city and county of Denver. Nothing in this subsection (2) shall prohibit the board from requiring binding arbitration for the final adjudication of any grievance.

**Source: L. 90:** Entire part added, p. 633, § 1, effective July 1. **L. 92:** (1)(f) amended and (2) added, p. 1504, § 5, effective April 16. **L. 97:** (2) amended, p. 616, § 4, effective July 1. **L. 2001:** (1)(a), (1)(c), (1)(d), and (2) amended, p. 1038, § 8, effective July 1.

**10-8-509. Administering carrier.** (1) The administering carrier shall perform all administrative, eligibility, and claims payment functions relating to the program, including:

(a) Establishing a billing procedure for collection of premiums from participants. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing.

(b) Assuring timely payment of benefits to participants, including:

(I) Making available information relating to the proper manner of submitting a claim for benefits to the program and providing forms upon which submissions shall be made;

(II) Evaluating the eligibility of each claim for payment under the applicable health benefit plan and administering each claim consistent with the standards of the industry and pursuant to guidelines established by the board;

(III) Notifying each claimant within thirty days after receiving a properly completed and executed proof of claim whether the claim is accepted, rejected, or compromised;

(IV) Ensuring that each accepted or compromised claim is paid within forty-five days of its acceptance or compromise.

(c) Submitting regular reports to the board regarding the operation of the program. The frequency, content, and form of the reports shall be as determined by the board.

(d) Paying claims expenses from the premium payments received from or on behalf of participants. If the payments for claims expenses exceed the portion of premiums allocated by the board for payment of claims expenses, the board shall provide for additional funds for payment of claims expenses.

(e) Determining net written and earned premiums, the expense of administration, and the paid and incurred losses for each year and reporting such information to the board and the commissioner in a form and manner prescribed by the commissioner.

(f) Accepting payments of premiums from participants.

(g) Repealed.

(2) The board shall establish its own competitive bidding process to select a carrier or third party administrator to serve as the administering carrier and to select one or more vendors to provide services that may be necessary to administer the program. The board shall evaluate bids submitted based on the criteria it establishes and shall not be subject to the provisions of article 103 of title 24, C.R.S., in making such selections.

(3) The administering carrier shall serve for a period determined by the board, subject to removal for cause. Prior to the expiration of the period of service, the board shall invite all interested parties, including the current administering carrier, to submit bids to serve as the administering carrier for the succeeding period.

(4) The administering carrier shall be paid as provided in the plan of operation.

**Source:** L. 90: Entire part added, p. 633, § 1, effective July 1. L. 95: (1)(g) repealed, p. 38, § 3, effective March 17. L. 97: (1)(a), IP(1)(b), (1)(d), (1)(f), and (2) amended, p. 616, § 5, effective July 1. L. 2001: (1) and (2) amended, p. 1039, § 9, effective July 1. L. 2008: (3) amended, p. 1254, § 1, effective July 1.

**10-8-510. Program - examination - financial report.** (1) Not later than July 1, 1991, and July 1 of each succeeding year, the board shall submit an audited financial report for the program for the preceding calendar year to the commissioner in a form provided or prescribed by the commissioner.

(2) The financial status of the program shall be subject to examination by the commissioner or the commissioner's designee. Such examinations shall be conducted at least once every five years.

**Source:** L. 90: Entire part added, p. 635, § 1, effective July 1. L. 97: (2) amended, p. 1478, § 24, effective June 3; (2) amended, p. 617, § 6, effective July 1. L. 2001: Entire section amended, p. 1040, § 10, effective July 1.

**Editor's note:** Amendments to subsection (2) by Senate Bill 97-41 and Senate Bill 97-220 were harmonized.

**10-8-511. Review of net premium - plan deficit. (Repealed)**

**Source:** L. 90: Entire part added, p. 635, § 1, effective July 1. L. 97: Entire section repealed, p. 617, § 7, effective July 1.

**10-8-512. Premiums - standard risk rate.** (1) Premiums charged for the health benefit plans and coordination of benefits plans offered by the program shall be based on the standard risk rate calculated pursuant to subsection (2) of this section and shall not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable actual expenses of providing the benefits. Rates and schedules may be adjusted by the board for appropriate risk factors in accordance with established actuarial underwriting practices.

(2) (a) The standard risk rate plans offered by the program shall be calculated using the average rate charged by the five largest carriers in the state who offer plans comparable to the plans issued by the program.

(b) If there are fewer than five carriers offering such plans, the standard risk rate shall be established by considering the rates charged by such number of carriers as there are in



the state and by using reasonable actuarial techniques, which shall reflect anticipated claims experience and expenses for such plans.

(3) (a) Average premium rates for coverage under the program shall be no less than the standard risk rate established pursuant to subsection (2) of this section and shall not exceed one hundred fifty percent of the standard risk rate established pursuant to subsection (2) of this section. Premium rates established pursuant to this paragraph (a) shall not apply to an individual who is approved by the board for participation in the premium subsidy program established by the board.

(b) and (c) (Deleted by amendment, L. 2006, p. 207, § 1, effective March 31, 2006.)

(4) All premium rates and rate schedules shall be submitted to the commissioner for his approval.

**Source:** L. 90: Entire part added, p. 635, § 1, effective July 1. L. 91: (3) amended, p. 1909, § 12, effective June 1. L. 97: (1) to (3) amended, p. 617, § 8, effective July 1. L. 2001: (1) and (3) amended, p. 1040, § 11, effective July 1. L. 2003: (3)(c) added, p. 1772, § 2, effective July 1. L. 2006: (3) amended, p. 207, § 1, effective March 31. L. 2007: (1) and (2) amended, p. 580, § 2, effective April 19.

**10-8-512.5. Fee schedule - compensation of health care providers.** (1) (a) The board may establish one or more fee schedules setting the amount that the program will compensate all medical, surgical, hospital, and other health care service providers who provide services covered by the program to a CoverColorado participant. A fee schedule established pursuant to this section may be based on various reimbursement methodologies commonly used in the health insurance industry, including discounted billed charges, case rates, the fee schedule established pursuant to section 8-42-101 (3) (a), C.R.S., for services provided by physicians to injured workers under the "Workers' Compensation Act of Colorado", and multiples of medicare reimbursement, but shall be set at amounts that exceed the reimbursement generally paid to any category of provider by medicare. Additionally, in developing a fee schedule pursuant to this section, the board shall consider at least the following factors:

(I) The cost savings to the program;

(II) The equity of the fee schedule for providers;

(III) The impact a fee schedule may have on the cost shift to other payers; and

(IV) The impact a fee schedule may have on access to providers.

(b) (I) Prior to establishing a fee schedule pursuant to this section, the board shall create one or more mechanisms, such as an advisory reimbursement committee, to assist and make recommendations to the board in establishing the fee schedule. The board shall take such recommendations and other input from providers into consideration when establishing a fee schedule.

(II) If the board establishes a fee schedule, the board shall review the fee schedule annually to determine whether any modifications are needed. Prior to determining whether to modify or actually modifying the fee schedule, the board shall consult with and consider the recommendations of any advisory reimbursement committee or other mechanism created pursuant to subparagraph (I) of this paragraph (b) and shall consider any other input from providers.

(III) Any mechanisms for input created by the board pursuant to this paragraph (b), including an advisory reimbursement committee, shall be public and open to participation by health care providers, hospital representatives, consumers, and other stakeholders who possess information that will contribute to and assist in the establishment or modification of a fee schedule as authorized by this section.

(c) Any fee schedule established pursuant to this section shall take effect no sooner than January 1, 2011, or on such later date as determined by the board.

(d) If the established fee schedule results in savings to the program, the board shall use the savings to reduce the amounts needed from participants, insurers, and the unclaimed property trust fund pursuant to section 10-8-530 (1) for the total funding for the program, as defined in section 10-8-530 (1) (e) (I).

(2) (a) A health care provider, health care facility, emergency service provider, or other person or entity providing health care services to a participant shall not contract with or otherwise demand payment from a participant or the program for amounts for services covered by the program that are in excess of the applicable fee on a fee schedule established pursuant to this section. Any demand for payment of charges that exceeds the applicable fee on the fee schedule shall be unlawful, void, and unenforceable as a debt.

(b) Nothing in this subsection (2) precludes a health care provider, health care facility, emergency service provider, or other person or entity providing health care services to a participant from billing or charging a participant for applicable coinsurance, deductible, or copayment amounts or for services not covered by the program.

**Source: L. 2010:** Entire section added, (SB 10-020), ch. 239, p. 1048, § 2, effective July 1.

**10-8-513. Eligibility for coverage under program.** (1) Except for those individuals who meet the criteria set forth in subsection (2) of this section and except as provided in section 10-8-513.5, any individual who is a resident of this state, unless exempted by subsection (4) of this section, and who has been residing in the United States under the color of law for at least six months, including children who have been placed for adoption, as defined in section 10-16-104 (6.5) or are under the legal guardianship of a resident of Colorado, shall be eligible for coverage under the program, if such individual is able to provide evidence satisfactory to the administering carrier that such individual meets one of the following conditions:

(a) Such individual has applied to a carrier for a health benefit plan and:

(I) Such application has been rejected or refused because of the health or medical condition of the applicant; or

(II) Such application has been accepted, but at a premium rate exceeding the rate available through the program; or

(III) Such application was accepted with a reduction or exclusion of coverage for a preexisting medical or health condition for a period exceeding six months.

(b) Such individual has a history of any medical or health condition that is on the presumptive conditions list adopted by the board pursuant to section 10-8-506 (1) (g.5).

(c) Such individual has had a health benefit plan involuntarily terminated by a carrier in this state for any reason other than nonpayment of a premium or premiums.

(d) For purposes of a coordination of benefits plan offered by the program, the individual is:

(I) Under age sixty-five;

(II) Eligible for medicare by reason of disability;

(III) Enrolled in parts A and B of medicare; and

(IV) Not applying to the program during the open enrollment period for a medicare supplement policy.

(1.5) For the purposes of paragraph (a) of subsection (1) of this section, a rejection, excessive rate, or exclusion by a carrier offering only stop-loss or excess loss insurance to a self-insured group health plan shall not be satisfactory evidence of eligibility.

(2) The following individuals shall not be eligible for coverage under the program:

(a) Those who are eligible for health care services under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.;

(a.5) Those who fail to pay any program premium when due;

(b) Those whose coverage under the program has been terminated less than twelve months prior to the date of the current application;

(c) Those who have received one million dollars in benefits from the program;

(d) Those who are inmates or residents of public institutions;

(e) Those who are eligible for any other health benefit plan, including any public program, that provides coverage for health care services, regardless of whether such other health benefit plan covers all health care services or categories of services that such individuals may from time to time need, except as provided in subparagraphs (II) and (III) of paragraph (a) or paragraph (d) of subsection (1) of this section; and



(f) Those for whom the program premiums are paid or reimbursed, directly or indirectly, under any public program; by any federal, state, or local government agency or political subdivision; or by any private entity or person, including a health care professional, health care facility, other health care provider, or pharmaceutical company, if any such payer could financially benefit from the coverage of an individual under the program. Notwithstanding any other provision in this paragraph (f), the board, on its own discretion, may implement one or more model programs involving such funding of program premiums if such model program is fiscally responsible in the use of program funds and consistent with section 10-8-502.

(3) Dependents of participants may be covered under the program; except that the program need not offer the same health benefit plan or the same premium to such dependent as is offered to eligible individuals.

(4) The residency requirement shall be waived for any individual who has been a participant in a program similar to CoverColorado in another state and who, within thirty days of relocating to this state, applies for coverage under the program.

(5) Notwithstanding any provision of this section to the contrary, an individual shall not lose eligibility for the program solely because a member of the individual's family pays, in whole or in part, the premiums for the program.

**Source:** L. 90: Entire part added, p. 635, § 1, effective July 1. L. 92: IP(1), (1)(b), (2)(e), and (2)(f) amended and (3) added, p. 1505, § 6, effective April 16. L. 97: (1), IP(2), (2)(a), (2)(e), (2)(f), and (3) amended and (2)(a.5) added, p. 618, § 9, effective July 1. L. 2001: Entire section amended, p. 1040, § 12, effective June 5. L. 2003: (3) amended, p. 1842, § 2, effective May 21. L. 2006: (2)(a) amended, p. 1998, § 32, effective July 1. L. 2007: (1)(d) added and (2)(e) amended, p. 581, §§ 3, 4, effective April 19.

**10-8-513.5. Federally eligible individuals.** (1) (a) For the purposes of this part 5, "federally eligible individual" means any one of the following, to the extent federally eligible individuals are designated by the governor:

(I) Any individual who meets the definition of "federally eligible individual" pursuant to section 10-16-105.5 (1);

(II) Any individual who is eligible for a tax credit against the amounts the individual must pay for qualifying health insurance pursuant to the federal "Trade Act of 2002", as amended; or

(III) Any other individual who is designated by federal law as eligible for coverage by a qualified state high-risk pool.

(b) Federally eligible individuals shall be eligible for coverage under the program and shall not be subject to the eligibility requirements of section 10-8-513.

(2) A dependent of a federally eligible individual may be covered under the program if the dependent satisfies the definition of "dependent" set forth in section 10-16-102 (14); except that the program need not offer the same health benefit plan or the same premium to such dependent as is offered to eligible individuals.

(3) The requirements of this part 5 regarding benefits, premiums, and lifetime or annual benefit limits, and the preexisting condition limitation periods allowed by section 10-8-516, apply to federally eligible individuals who participate in the program, unless otherwise provided in the federal law establishing the eligibility for the individuals.

**Source:** L. 2001: Entire section added, p. 1042, § 13, effective June 5. L. 2003: (1) and (2) amended, p. 1842, § 3, effective May 21. L. 2010: (3) amended, (SB 10-020), ch. 239, p. 1050, § 4, effective July 1.

**10-8-514. Deductibles - coinsurance.** (1) Any participant may select coverage from a choice of deductibles offered by the board. Such choice shall include deductibles of not less than three hundred dollars.

(2) The board shall establish such coinsurance requirements and out-of-pocket expense maximums for each of the health benefit plans as it shall deem comparable to those offered in the group health coverage market in Colorado.

(3) For any policy year in which a participant's out-of-pocket maximum is reached, the program shall pay one hundred percent of all additional covered costs incurred by the participant.

**Source:** L. 90: Entire part added, p. 636, § 1, effective July 1. L. 97: (1) amended, p. 619, § 10, effective July 1. L. 2001: Entire section amended, p. 1042, § 14, effective July 1. L. 2003: (1) amended, p. 1843, § 4, effective May 21.

**10-8-514.5. Incentives or rewards for participation in wellness and prevention programs.** Notwithstanding any provision of this part 5 to the contrary and consistent with section 10-16-136, the board or a carrier providing health benefit plans to participants may offer incentives or rewards to participants for participation in a wellness and prevention program or for satisfaction of a standard related to a health factor pursuant to a wellness and prevention program.

**Source:** L. 2009: Entire section added, (HB 09-1012), ch. 188, p. 823, § 3, effective July 1. L. 2010: Entire section amended, (HB 10-1160), ch. 283, p. 1328, § 5, effective July 1.

**10-8-515. Maximum benefit.** The maximum lifetime benefit per insured is one million dollars as provided in section 10-8-525.

**Source:** L. 90: Entire part added, p. 637, § 1, effective July 1. L. 97: Entire section amended, p. 619, § 11, effective July 1. L. 2001: Entire section amended, p. 1043, § 15, effective July 1.

**10-8-516. Preexisting conditions.** (1) Except as provided in subsection (2) of this section, coverage under the program shall exclude charges or expenses incurred during the first six months following the effective date of coverage as to any preexisting condition that is not defined more restrictively than an injury, sickness, or pregnancy for which a person incurred charges, received medical treatment, consulted a health care professional, or took prescription drugs within the six-month period immediately preceding the effective date of coverage.

(2) The program shall give credit for the period of time an eligible individual had qualifying previous coverage for the preexisting condition that was continuous to a date not more than ninety days prior to the effective date of enrollment in the program. In the case of an individual eligible for the program pursuant to section 10-8-513.5 (1) (a) (II), the program shall not impose an exclusion on coverage of a preexisting condition of any such individual if the individual had qualifying previous coverage for at least a three-month period continuous to a date not more than ninety days prior to enrollment in the program.

(3) Repealed.

**Source:** L. 90: Entire part added, p. 637, § 1, effective July 1. L. 92: (2) and (3) repealed, p. 1505, § 7, effective April 16. L. 95: (1) amended, p. 37, § 1, effective March 17. L. 97: (2) RC&RE, p. 619, § 12, effective July 1. L. 2001: (1) and (2) amended, p. 1043, § 16, effective July 1. L. 2003: (1) and (2) amended, p. 1843, § 5, effective May 21.

**10-8-517. Employers of persons covered under the plan. (Repealed)**

**Source:** L. 90: Entire part added, p. 637, § 1, effective July 1. L. 92: (1)(c) repealed, p. 1506, § 8, effective April 16. L. 95: Entire section repealed, p. 37, § 2, effective March 17.

**10-8-518. Nonduplication of benefits.** (1) The health benefit plans of the program shall be the last payor of benefits whenever any other health benefit plan or source of third party payment is available.



(2) The program shall have a cause of action against a participant for the recovery of the amount of any benefits paid that are not for health care services covered under the applicable health benefit plan. Future benefits due under the applicable health benefit plan may be reduced or denied as a setoff against any amount recoverable under this subsection (2).

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 92: Entire section amended, p. 1506, § 9, effective April 16. L. 97: (2) amended, p. 620, § 13, effective July 1. L. 2001: Entire section amended, p. 1043, § 17, effective July 1.

**10-8-519. Provisions of policies.** (1) A health benefit plan or coordination of benefits plan offered under this part 5 shall provide that the program is obligated to renew the policy until the first day on which the individual in whose name the health benefit plan or coordination of benefits plan is issued reaches the age of sixty-five and becomes eligible for medicare coverage because of the individual's age, except as otherwise provided in this part 5. The program is not obligated to renew the policy of any individual who fails to pay any plan premium when due.

(2) The premium rates for health benefit plans offered by the program shall not be changed except on a class basis and with a clear disclosure in the health benefit plan of the right of the program to make such changes.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 97: (1) amended, p. 620, § 14, effective July 1. L. 2001: Entire section amended, p. 1043, § 18, effective July 1. L. 2007: (1) amended, p. 581, § 5, effective April 19.

**10-8-520. Rules and regulations.** The commissioner shall adopt rules and regulations to implement the purposes of this part 5.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1.

**10-8-521. Notice to residents.** If any individual who is a resident of this state applies to a carrier for a health benefit plan or a medicare supplement policy and the carrier responds to such application as described in section 10-8-513 (1) (a), or if any federally eligible individual applies to a carrier for a health benefit plan, the carrier shall give the individual written notice that the individual may be eligible for coverage under the program, including information about available benefits, exclusions, and premium subsidies, and the name, address, and telephone number of the program.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 97: Entire section amended, p. 620, § 15, effective July 1. L. 2001: Entire section amended, p. 1043, § 19, effective July 1. L. 2007: Entire section amended, p. 582, § 6, effective April 19.

**10-8-522. Liability.** The members of the board shall not be individually or jointly and severally liable for their participation in the program or for any action taken in good faith under the provisions of this part 5.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 2001: Entire section amended, p. 1044, § 20, effective July 1.

**10-8-523. Tax exemption.** The program shall be exempt from any tax levied by this state or any of its political subdivisions.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 2001: Entire section amended, p. 1044, § 21, effective July 1.

**10-8-524. Effective date of insurance.** Any health insurance coverage provided under this part 5 shall become effective as soon as practicable after July 1, 1990.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1.

**10-8-525. Benefits - availability - maximum coverage.** (1) Every eligible individual, as determined pursuant to section 10-8-513 (1) (a), (1) (b), or (1) (c), may purchase from the program a health benefit plan that extends coverage for major medical expenses or, in the case of a federally eligible individual, as defined in section 10-8-513.5, that extends comprehensive coverage. Any such health benefit plan shall pay for the health care services that are covered under this part 5, subject to the deductible and coinsurance payments and other cost containment controls authorized under this part 5 and subject to a lifetime limit of one million dollars per insured individual.

(2) Every individual eligible pursuant to section 10-8-513 (1) (d) may purchase a coordination of benefits plan that coordinates with medicare coverage, as determined by the board. A coordination of benefits plan offered under this part 5 may extend coverage for health care services or expenses not covered by medicare. Coverage under a coordination of benefits plan shall not duplicate coverage under medicare and shall be subject to a lifetime limit of one million dollars per participant.

**Source:** L. 90: Entire part added, p. 638, § 1, effective July 1. L. 97: Entire section amended, p. 620, § 16, effective July 1. L. 2001: Entire section amended, p. 1044, § 22, effective July 1. L. 2007: Entire section amended, p. 582, § 7, effective April 19.

**10-8-526. Expenses covered.** Health benefit plans issued pursuant to this part 5 shall cover expenses incurred for health care services or articles or items related to such services or articles that are medically necessary, subject to the cost containment controls authorized by this part 5; except that such coverage shall not extend to costs for such services or articles over and above any schedule of fees established pursuant to section 10-8-512.5 and shall not extend to services or articles that are not prescribed by a physician who is licensed to practice in the state or jurisdiction where such services or articles are provided. Such services shall include but not be limited to care for acute illnesses and ongoing care for the treatment of the insured's uninsurable condition. Coverage under a health benefit plan shall be at least comparable to that issued on a group basis in the market.

**Source:** L. 90: Entire part added, p. 639, § 1, effective July 1. L. 92: Entire section amended, p. 1507, § 10, effective April 16. L. 97: Entire section amended, p. 620, § 17, effective July 1. L. 2001: Entire section amended, p. 1044, § 23, effective July 1. L. 2007: Entire section amended, p. 582, § 8, effective April 19. L. 2010: Entire section amended, (SB 10-020), ch. 239, p. 1049, § 3, effective July 1.

**10-8-527. Expenses excluded.** (1) Health benefit plans issued pursuant to this part 5 shall clearly disclose those services, items, or supplies that are not covered expenses, including, but not limited to, expenses incurred for:

- (a) Illness or injury due to an act of war;
- (b) Services rendered prior to the effective date of coverage under the applicable health benefit plan for the person on whose behalf the expense is incurred;
- (c) Services for which no charge would be made in the absence of insurance or for which the insured bears no legal obligation to pay;
- (d) (I) Services or charges incurred by the participant that are otherwise covered by:
  - (A) Medicare, medicaid, or the "Colorado Medical Assistance Act";
  - (B) Medical services provided for members of the United States armed forces and their dependents or for employees of said armed forces;
  - (C) Military service-connected disability benefits;
  - (D) Other benefit or entitlement programs provided for by the laws of the United States;



(E) Workers' compensation or similar programs addressing injuries, diseases, or conditions incurred in the course of employment covered by such programs;

(F) Benefits payable without regard to fault pursuant to any motor vehicle or other liability insurance policy or equivalent self-insurance.

(II) This exclusion shall not apply to services or charges which exceed the benefits payable under the applicable program listed in sub-subparagraphs (A) to (F) of subparagraph (I) of this paragraph (d) and which are otherwise eligible for payment under this part 5.

(e) Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering such service;

(f) That part of any charge for services or articles rendered or prescribed by a health care provider which exceeds the prevailing charge for such services or articles in the locality wherein they are provided;

(g) Services or articles not medically necessary;

(h) Care which is primarily custodial or domiciliary in nature;

(i) Cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure;

(j) Eye surgery if corrective lenses would alleviate the problem;

(k) Experimental services or supplies;

(l) Service of a blood donor and any fee for failure of the participant to replace the first three pints of blood provided in each calendar year;

(m) Personal supplies or services provided by a health care facility or any other nonmedical or nonprescribed supply or service.

**Source:** **L. 90:** Entire part added, p. 639, § 1, effective July 1. **L. 97:** (1)(k) amended, p. 621, § 18, effective July 1. **L. 2001:** IP(1), (1)(b), IP(1)(d)(I), and (1)(l) amended, p. 1044, § 24, effective July 1.

**Cross references:** For the "Colorado Medical Assistance Act", see articles 4, 5, and 6 of title 25.5.

**10-8-528. Other health benefit plans not excluded.** Nothing in this part 5 shall be construed to prohibit the program from issuing additional health benefit plans with provisions other than those provided in this part 5 that, in the opinion of the board, may be of benefit to the citizens of the state.

**Source:** **L. 90:** Entire part added, p. 640, § 1, effective July 1. **L. 97:** Entire section amended, p. 621, § 19, effective July 1. **L. 2001:** Entire section amended, p. 1045, § 25, effective July 1.

**10-8-529. Insolvency, impairment, or dissolution.** In the event of any insolvency or impairment or dissolution of the program by the general assembly, the commissioner shall have those rights and duties specified in parts 4 and 5 of article 3 of this title to assure abatement of any delinquency or the orderly termination of the affairs and obligations of the program.

**Source:** **L. 90:** Entire part added, p. 640, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1045, § 26, effective July 1.

**10-8-530. Funding of program - rules - repeal.** (1) (a) The program shall be funded from the following sources, and on and after January 1, 2009, those funding sources shall constitute, as nearly as possible, the percentages of total funding for the program as specified in paragraph (b) of this subsection (1):

(I) Moneys transmitted pursuant to section 38-13-116.5 (2.7), C.R.S.;

(II) Premiums charged pursuant to section 10-8-512;

(III) Moneys remaining in the CoverColorado cash fund, created pursuant to this section, as it existed prior to July 1, 1997;

(IV) Special fees assessed against insurers as provided in subsection (1.5) of this section;

(V) Any moneys accepted through gifts, grants, or donations received by the board for operation of the program, including contributions received pursuant to the premium tax credit allocation provisions of section 10-8-534.

(b) (I) Except as otherwise provided in paragraph (d) of this subsection (1), moneys transmitted to the program pursuant to subparagraph (I) of paragraph (a) of this subsection (1) shall constitute, as nearly as possible, twenty-five percent of the total funding for the program for a given calendar year.

(II) Moneys charged, accepted, or available for the program pursuant to subparagraph (II), (III), or (V) of paragraph (a) of this subsection (1) shall constitute, as nearly as possible, fifty percent of the total funding for the program for a given calendar year.

(III) Moneys collected from special fees assessed against insurers pursuant to subparagraph (IV) of paragraph (a) of this subsection (1) shall constitute, as nearly as possible, twenty-five percent of the total funding for the program for a given calendar year, and in no case shall the special fees constitute more than twenty-five percent of the total funding for the program in any given calendar year. The special fees may constitute less than twenty-five percent of the total funding for the program in a calendar year if the program experiences unexpected growth.

(b.5) Nothing in paragraph (b) of this subsection (1) limits the ability of the program to apply for, accept, or expend federal funds, grants, or donations provided to the program for the implementation and administration of a temporary high risk health insurance pool program as required by section 1101 of the federal "Patient Protection and Affordable Care Act", H.R. 3590, Pub.L. 111-148, or for the payment of claim expenses of the federally eligible individuals who participate in the program under a temporary high risk health insurance pool program pursuant to said federal act. Any federal funds, grants, or donations provided to the program for the purposes specified in this paragraph (b.5) shall not be commingled with moneys described in paragraph (a) of this subsection (1) and shall not be included as a source of funding or as part of the funding formula for the program as set forth in paragraph (b) of this subsection (1).

(c) (I) On and after January 1, 2009, the board shall submit an annual report to the state treasurer specifying the following information:

(A) Incurred claims and administrative expenses of the program in the immediately preceding calendar year;

(B) The expected annual program enrollment growth, claims expenses, and other actuarial considerations of the program; and

(C) The amount needed from the unclaimed property trust fund to provide twenty-five percent of the total funding for the program for the current calendar year, based on the projected operating revenues of the program and the projected cash balance of all program accounts.

(II) After receipt of the report required by this paragraph (c), the state treasurer shall transmit the amount specified in sub-subparagraph (C) of subparagraph (I) of this paragraph (c) to the program in twelve equal monthly installments. The moneys transmitted by the state treasurer shall be used to pay claims and administrative expenses of the program and to maintain reserves for claims incurred but not reported and a surplus equal to five percent of projected annual claims. No part of the moneys transmitted by the state treasurer shall be used to pay for the administrative expenses or losses of any dependents who have chosen coverage under the program.

(d) If the program experiences unexpected growth, and if the losses for the program for claims and administrative expenses exceed the projected losses for the program in that calendar year, the board shall calculate the excess losses and report the amount of excess losses to the state treasurer within ninety days after the end of the calendar year in which the excess losses are incurred. Upon receipt of the board's report on the program's excess losses, the state treasurer shall make a supplemental transmittal of moneys from the unclaimed property trust fund to the program to cover the excess losses.

(e) As used in this section:



(I) "Total funding for the program" means the amount needed in a given calendar year to fund projected claims, administrative expenses, reserves for claims incurred but not reported, and a surplus equal to five percent of the projected annual claims of the program.

(II) "Unexpected growth" means an increase in program enrollment or claims expenses in a calendar year of more than one hundred fifteen percent of the amount of the projected growth in program enrollment or claims expenses for that calendar year.

(1.3) Repealed.

(1.5) (a) Repealed.

(a.5) (I) On and after January 1, 2009, the program shall assess special fees against insurers in an amount necessary to provide the percentage of total funding for the program specified in paragraph (b) of subsection (1) of this section. The amount of the special fees shall be determined by the board based on the incurred claims and administrative expenses of the program in the immediately preceding calendar year, the expected annual program growth, and other actuarial considerations of the program.

(II) Special fees assessed pursuant to this subsection (1.5) shall be used to pay the administrative expenses and losses related to eligible individuals in the program. No part of the special fees shall be used to pay for the administrative expenses or losses of any dependents who have chosen coverage under the program.

(III) If an insurer fails to pay a special fee to the program in accordance with the time periods established by rule, the commissioner may use all powers conferred by the insurance laws of this state to enforce payment of the special fees.

(b) (I) The commissioner shall promulgate rules to implement this subsection (1.5), including, but not limited to:

(A) The reasonable time periods for the billing and collection of the special fees;

(B) The process for determining the allocation of the assessment among insurers, including the process for obtaining accurate information about the number of lives insured by any insurer within the six months prior to an assessment;

(C) Any procedures for the approval of deferral or abatement of special fees, in whole or in part, including, but not limited to, the creation of a credit against the amount of an assessment owed by an insurer for such insurer who issues a substantial number of health benefit plans to persons who are eligible for the program; and

(D) The equity of the assessment.

(II) In promulgating such rules for an equitable assessment, the commissioner shall give consideration to:

(A) The volume of premium dollars received by a stop-loss insurer relative to the number of covered lives insured by that insurer and any other factors; and

(B) The budget and rate setting deadlines of the insurers.

(III) (Deleted by amendment, L. 2008. p. 1254, § 2, effective July 1, 2008.)

(c) (Deleted by amendment, L. 2008. p. 1254, § 2, effective July 1, 2008.)

(d) Repealed. / (Deleted by amendment, L. 2008. p. 1254, § 2, effective July 1, 2008.)

(e) (Deleted by amendment, L. 2008. p. 1254, § 2, effective July 1, 2008.)

(f) Repealed.

(g) For purposes of this subsection (1.5), "lives insured" shall be determined by rule of the commissioner; except that in no event shall "lives insured" include persons who receive health benefits through medicaid, medicare, the children's basic health plan pursuant to article 8 of title 25.5, C.R.S., or the federal employees health benefit program. "Lives insured" may exclude dependent lives, at the discretion of the commissioner.

(g.5) Repealed.

(h) Repealed. / (Deleted by amendment, L. 2008. p. 1254, § 2, effective July 1, 2008.)

(i) (Deleted by amendment, L. 2004. p. 1150, § 3, effective August 4, 2004.)

(3) Premiums shall be collected by the administering carrier in accordance with section 10-8-509 (1), with all premiums collected used to pay the administrative expenses and the losses of the program. Any funds that are not immediately needed to pay administrative expenses shall be invested as determined by the board.

(4) (a) Any special fees assessed shall be collected by and deposited into the accounts of the program, for use as provided in subsection (1.5) of this section. Any moneys that are

not immediately needed to pay expenses and losses shall be invested as determined by the board in accordance with investment guidelines set forth in its plan of operation.

(b) Any moneys received from the treasurer pursuant to paragraph (a) of subsection (1) of this section shall be collected by and deposited into the accounts of the program for the uses provided in subparagraph (II) of paragraph (c) of subsection (1) of this section. Any moneys that are not immediately needed to pay expenses and losses shall be invested as determined by the board in accordance with the investment guidelines set forth in its plan of operation.

(c) (I) The executive director of the program shall report annually to the joint budget committee concerning the receipt and expenditure of moneys in the accounts of the program.

(II) The reporting requirement pursuant to this paragraph (c) shall be exempt from the third-year review by the general assembly pursuant to section 24-1-136, C.R.S.

(d) Any moneys in the CoverColorado cash fund as of August 4, 2004, shall be collected by and deposited into the accounts of the program to be used for the administration of the program.

(5) (a) Paragraphs (b) to (e) of subsection (1) of this section and paragraph (a.5) of subsection (1.5) of this section are repealed, effective July 1, 2017.

(b) Prior to the repeal of the paragraphs specified in this subsection (5), the state auditor shall conduct or cause to be conducted a review and evaluation of the efficacy of the funding structure of the program as specified in those paragraphs. The state auditor shall submit a report to the general assembly by January 1, 2017, detailing its review and evaluation of the funding structure of the program and making a recommendation regarding whether the funding structure, as specified in paragraphs (b) to (e) of subsection (1) of this section and paragraph (a.5) of subsection (1.5) of this section, should be continued, modified, or repealed.

**Source:** **L. 90:** Entire part added, p. 640, § 1, effective July 1. **L. 92:** Entire section amended, p. 1507, § 11, effective April 16. **L. 93:** (1) amended, p. 1074, § 1, effective June 1; (1) amended, p. 1024, § 2, effective June 2. **L. 97:** Entire section amended, p. 621, § 20, effective July 1. **L. 99:** (3) amended, p. 619, § 8, effective August 4. **L. 2000:** (1) (a) amended, p. 400, § 2, effective August 2. **L. 2001:** Entire section amended, p. 1045, § 27, effective July 1. **L. 2003:** (1.5)(a), (1.5)(b)(I)(B), and (1.5)(g) amended and (1.5)(f) repealed, p. 1844, §§ 6, 7, effective May 21; (1.5)(g.5) added, p. 1773, § 3, effective July 1. **L. 2004:** (1)(e) and (1.5)(a) amended, p. 51, § 9, effective March 4; (1)(a), (1.5)(a), (1.5)(c), (2), and (4) amended and (1.3) added, pp. 1150, 1151, §§ 3, 4, effective August 4. **L. 2006:** (1.5)(g) amended, p. 1998, § 33, effective July 1. **L. 2008:** (1.5)(d) and (1.5)(h) repealed, p. 695, § 1, effective May 1; (1), (1.3), (1.5)(a), (1.5)(b)(I)(A), (1.5)(b)(I)(B), (1.5)(b)(III), (1.5)(c), (1.5)(d), (1.5)(e), (1.5)(h), and (4)(b) amended and (1.5)(a.5) and (5) added, pp. 1254, 1258, §§ 2, 3, effective July 1. **L. 2010:** (1)(b.5) added, (SB 10-020), ch. 239, p. 1050, § 5, effective July 1.

**Editor's note:** (1) Amendments to subsection (1) by Senate Bill 93-55 and House Bill 93-1336 were harmonized.

(2) Subsection (1.5)(g.5)(II) provided for the repeal of subsection (1.5)(g.5), effective March 1, 2004. (See L. 2003, p. 1773.)

(3) Amendments to subsections (1.5)(d) and (1.5)(h) by House Bill 08-1390 and House Bill 08-1309 were harmonized.

(4) Subsections (1.3)(b) and (1.5)(a)(II) provided for the repeal of subsections (1.3) and (1.5)(a), respectively, effective January 1, 2009. (See L. 2008, p. 1254.)

(5) The CoverColorado cash fund referenced in subsection (1)(a)(III) of this section was repealed, effective August 4, 2004, by Senate Bill 04-211; the reference to the fund has been retained for historical purposes.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsections (1)(e) and (1.5)(a), see section 1 of chapter 12, Session Laws of Colorado 2004.



**10-8-531. Oversight of Colorado uninsurable health insurance plan - health, environment, welfare, and institutions committees of senate and house of representatives. (Repealed)**

**Source:** L. 90: Entire part added, p. 640, § 1, effective July 1. L. 2001: Entire section repealed, p. 1048, § 28, effective July 1.

**10-8-532. Repeal of part. (Repealed)**

**Source:** L. 90: Entire section added by revision, pp. 628, 641, §§ 1, 5. L. 93: Entire section repealed, p. 1025, § 3, effective June 2.

**10-8-533. Evaluation of ceding risk to CoverColorado - repeal. (Repealed)**

**Source:** L. 2003: Entire section added, p. 1773, § 4, effective July 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective March 1, 2004. (See L. 2003, p. 1773.)

**10-8-534. Tax credit for contributions to CoverColorado - allocation notice - rules.**

(1) (a) For tax years 2005 through 2014 there shall be allowed a credit against the tax imposed by sections 10-3-209 and 10-6-128 to any insurance company that becomes a qualified taxpayer by making a contribution to CoverColorado pursuant to this section.

(b) A qualified taxpayer claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax as a result of claiming such credit.

(2) The commissioner may promulgate rules necessary for the administration of the tax credit allowed by subsection (1) of this section in accordance with article 4 of title 24, C.R.S.

(3) (a) Subject to paragraph (c) of subsection (4) of this section, an insurance company shall become a qualified taxpayer if all of the following conditions are met:

(I) The insurance company declares with its quarterly tax payment due on or about July 31 in the manner prescribed by the commissioner its intent to contribute to CoverColorado on or before October 31 an amount of money equal to the premium taxes paid by the company pursuant to the July 31 tax payment or a lesser amount as specified by the commissioner if required pursuant to paragraph (b) of subsection (4) of this section;

(II) The amount of the tax credits granted by the commissioner does not exceed the annual maximum aggregate amount set forth in subsection (4) of this section; and

(III) The insurance company receives an allocation notice from the commissioner and the insurance company makes the contribution to CoverColorado as specified in the allocation notice on or before October 31.

(b) Subject to paragraph (c) of subsection (4) of this section, an insurance company that has become a qualified taxpayer may claim the tax credit on one or more subsequent quarterly or annual tax payments beginning on or about October 31.

(c) The board shall promptly notify the commissioner when it receives a contribution pursuant to this section of the amount and date of the contribution and the name of the contributor.

(4) (a) Subject to paragraph (c) of this subsection (4), the commissioner shall by September 30:

(I) Send an allocation notice to each insurance company whose declaration of intent to contribute to CoverColorado has been accepted pursuant to this subsection (4). The allocation notice shall specify the amount of tax credits allocated to the insurance company and the amount of cash the insurance company must contribute to CoverColorado by October 31, which amounts shall be identical and not exceed the amount of premium taxes paid by the insurance company in its quarterly tax payment due on or about July 31; and

(II) Post on the division's web site whether the full amount of tax credits authorized to be allocated each year has been allocated.

(b) Subject to paragraph (c) of this subsection (4), the commissioner shall allocate no more than five million dollars of premium tax credits per year or, if Senate Bill 04-106 is declared to be unconstitutional by a final judgment that invalidates the tax credits enacted by such bill, no more than ten million dollars of premium tax credits per year. The commissioner shall allocate to an insurance company that has declared its intent to contribute to CoverColorado pursuant to this section tax credits in an amount equal to the amount of premium taxes paid by the insurance company in its quarterly tax payment due on or about July 31 in the order in which the division receives such quarterly tax payments until the full amount of credits available pursuant to this section has been allocated; except that, if such amount of taxes or the sum of all such taxes filed by all such insurance companies on any one day would exceed, singly or in the aggregate, the annual maximum aggregate amount of tax credits available under this section, the commissioner shall reduce the contribution of the insurance company whose contribution first exceeds the annual maximum aggregate to the amount needed to satisfy the annual maximum aggregate. If the commissioner is unable to determine the order of receipt of tax payments on that day, the commissioner shall allocate the tax credits to the company or among the companies on a pro rata basis based on the ratio such company's quarterly tax payment bears to the total amount of all such companies' quarterly tax payments until the full amount of credits available pursuant to this section has been allocated.

(c) (I) The commissioner shall allow insurance companies to declare their intent to contribute to CoverColorado pursuant to this section on the insurance companies' quarterly tax payments due on or about October 31 and shall send such companies allocation notices by February 1 if:

(A) The full amount of tax credits available in any one year have not been fully allocated by the commissioner pursuant to statements of intent filed with insurance companies' quarterly tax payments due on or about July 31; or

(B) Such full amount has been claimed but one or more insurance companies failed to timely make a contribution to CoverColorado.

(II) An insurance company that declares its intent to contribute to CoverColorado pursuant to this paragraph (c) shall make the contribution to CoverColorado as specified in the allocation notice on or before March 1 and may claim the tax credit on one or more subsequent quarterly or annual tax payments due on or about March 1.

(5) Moneys contributed to the board pursuant to this section and interest derived from the deposit and investment of such moneys shall be used for only those purposes specified in section 10-8-530 (1.5) and only when an assessment would otherwise be necessary in the absence of such moneys and interest.

(6) Offers to contribute to CoverColorado that were made pursuant to this section prior to April 22, 2005, shall be deemed to be of no effect.

**Source:** L. 2004: Entire section added, p. 48, § 8, effective March 4. L. 2005: Entire section R&RE, p. 342, § 1, effective April 22.

**Cross references:** For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 12, Session Laws of Colorado 2004.

**10-8-535. CoverColorado long-term funding task force - members - funding plan - repeal. (Repealed)**

**Source:** L. 2008: Entire section added, p. 695, § 2, effective May 1; entire section added, p. 1259, § 4, effective July 1.

**Editor's note:** (1) Identical provisions were enacted in House Bill 08-1309 and House Bill 08-1390 as §§ 10-8-535 and 10-8-536, respectively, but were merged under § 10-8-535 for ease of location.

(2) Subsection (6) provided for the repeal of this section, effective July 1, 2009. (See L. 2008, pp. 695, 1259.)



## PART 6

## SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY PROGRAM ACT

**10-8-601 to 10-8-607. (Repealed)**

**Source: L. 2004:** Entire part repealed, p. 1011, § 23, effective August 4.

**Editor's note:** This part 6 was added in 1992. For amendments to this part 6 prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## FRANCHISE INSURANCE

## ARTICLE 9

## Franchise Insurance

**10-9-101 to 10-9-104. (Repealed)**

**Source: L. 95:** Entire article repealed, p. 197, § 9, effective April 13.

**Editor's note:** This article was numbered as article 21 of chapter 72, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## CREDIT INSURANCE

## ARTICLE 10

## Credit Insurance

10-10-101.	Short title.	10-10-110.	ing of rating data - withdrawal of forms.
10-10-102.	Legislative declaration.	10-10-111.	Premiums and refunds.
10-10-103.	Definitions.	10-10-112.	Issuance of policies.
10-10-104.	Application of article.	10-10-113.	Claims.
10-10-105.	Forms of credit life insurance and credit accident and health insurance. (Repealed)	10-10-114.	Existing insurance - choice of insurer.
10-10-106.	Amount of credit insurance.	10-10-115.	Enforcement.
10-10-107.	Term of credit insurance.	10-10-116.	Judicial review.
10-10-108.	Provisions of policies and certificates of insurance - disclosure to debtors.	10-10-117.	Penalties.
10-10-109.	Filing form certification - fil-	10-10-118.	Insurance expense not computed as cost of loan.
		10-10-119.	Charge accounts.
			Truncated coverage.

**10-10-101. Short title.** This article shall be known and may be cited as the "Credit Insurance Act".

**Source: L. 69:** p. 536, § 2. **C.R.S. 1963:** § 72-28-2. **L. 92:** Entire section amended, p. 1569, § 81, effective May 20.

**10-10-102. Legislative declaration.** The purpose of this article is to promote the public welfare by regulating credit insurance. Nothing in this article is intended to prohibit or discourage reasonable competition. The provisions of this article shall be liberally construed.

**Source:** L. 69: p. 536, § 1. C.R.S. 1963: § 72-28-1. L. 92: Entire section amended, p. 1569, § 82, effective May 20.

**10-10-103. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of insurance of Colorado.
- (2) "Credit insurance" means insurance on a debtor to provide indemnity for payments or loan balance, or any combination thereof, becoming due on a specific loan or other credit transaction upon the occurrence of a contingency for which insurance is obtained.
- (3) (Deleted by amendment, L. 92, p. 1569, § 83, effective May 20, 1992.)
- (4) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them, or any director, officer, or employee of any of them, or any other person in any way associated with any of them.
- (5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.
- (6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.
- (7) "Truncated coverage" means credit insurance that provides a term of insurance coverage for a period that is shorter than the full term of the indebtedness remaining at the time the insurance coverage is elected. The term does not include credit insurance coverage that terminates on attainment of a specific age.

**Source:** L. 69: p. 536, § 4. C.R.S. 1963: § 72-28-4. L. 92: (2) and (3) amended, p. 1569, § 83, effective May 20. L. 2000: (7) added, p. 151, § 1, effective August 2.

**10-10-104. Application of article.** All insurance in connection with loans or other credit transactions shall be subject to the provisions of this article. Insurance shall not be subject to the provisions of this article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

**Source:** L. 69: p. 536, § 3. C.R.S. 1963: § 72-28-3. L. 85: Entire section amended, p. 302, § 14, effective May 10. L. 92: Entire section amended, p. 1569, § 84, effective May 20. L. 2000: Entire section amended, p. 168, § 1, effective August 2.

**10-10-105. Forms of credit life insurance and credit accident and health insurance. (Repealed)**

**Source:** L. 69: p. 537, § 5. C.R.S. 1963: § 72-28-5. L. 86: (2) added, p. 593, § 1, effective March 26. L. 92: Entire section repealed, p. 1569, § 85, effective May 20.

**10-10-106. Amount of credit insurance.** (1) The initial amount of credit insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

(2) Notwithstanding the provisions of subsection (1) of this section, insurance on agricultural credit transaction commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment on a nondecreasing or level term plan.



(3) Notwithstanding any other provision of this section, insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.

(4) The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

**Source:** L. 69: p. 537, § 6. C.R.S. 1963: § 72-28-6. L. 92: (1) amended, p. 1570, § 86, effective May 20.

**10-10-107. Term of credit insurance.** The term of any credit insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than thirty days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor, unless the debtor has agreed in writing. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance is issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 10-10-110.

**Source:** L. 69: p. 537, § 7. C.R.S. 1963: § 72-28-7. L. 83: (1)(b) amended, p. 512, § 1, effective May 16. L. 92: Entire section amended, p. 1570, § 87, effective May 20.

**10-10-108. Provisions of policies and certificates of insurance - disclosure to debtors.** (1) All credit insurance shall be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit insurance shall, in addition to other requirements of law, set forth:

(a) The name and home office address of the insurer;

(b) The name of the debtor or, in the case of a certificate under a group policy, the identity by name, or otherwise, of the debtor;

(c) The premium or amount of payment, if any, by the debtor separately for credit insurance;

(d) A description of the coverage, including the amount and term thereof, and any exceptions, limitations, and restrictions, and it shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(3) Said individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred, except as provided in subsection (4) of this section.

(4) (a) If said individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor, shall be delivered to the debtor at the time such indebtedness is incurred, setting forth:

(I) The name and home office address of the insurer;

(II) The name of the debtor;

(III) The premium or amount of payment by the debtor, if any, separately for credit insurance;

(IV) The amount, term, and a brief description of the coverage provided.

(b) The copy of the application for, or notice of, proposed insurance shall also refer exclusively to insurance coverage and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this subsection (4) is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in section 10-10-107.

(c) If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and, if the amount of premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

**Source:** L. 69: p. 538, § 8. C.R.S. 1963: § 72-28-8. L. 92: (1), (2), and (4)(a)(III) amended, p. 1570, § 88, effective May 20.

#### **10-10-109. Filing form certification - filing of rating data - withdrawal of forms.**

(1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state shall be certified, and the schedules of premium rates pertaining thereto shall be filed with the commissioner pursuant to subsections (3), (3.5), and (4) of this section.

(2) Repealed.

(2.5) (a) For credit insurance directly written by a state or national bank, an insurer may, by form number, elect to be subject to and have its premium rate or schedule of premium rates determined pursuant to paragraph (b) or paragraph (c) of this subsection (2.5). For credit insurance not directly written by a state or national bank, an insurer shall have its premium rate or schedule of premium rates determined by paragraph (c) of this subsection (2.5).

(b) A premium rate or schedule of premium rates shall be deemed reasonable for all purposes under this article if the rate or schedule produces, or reasonably may be expected to produce, a ratio of incurred claims to earned premium of not less than forty percent.

(c) (I) Except for credit insurance directly written by a state or national bank where the insurer has elected to be subject to paragraph (b) of this subsection (2.5), an insurer's premium rate or schedule of premium rates shall be reasonable in relation to the benefits provided and shall not be excessive, inadequate, nor unfairly discriminatory. The commissioner may establish rates that may be used by any insurer without filing. In establishing such rates, the commissioner shall consider and provide for the following component rating elements:

(A) Actual and expected loss experience;

(B) General and administrative expenses;

(C) Loss settlement and adjustment expenses;

(D) Reasonable creditor compensation;

(E) Investment income;

(F) The manner in which premiums are charged;

(G) Other acquisition costs;

(H) Reserves;

(I) Taxes;

(J) Regulatory license fees and fund assessments;

(K) Reasonable insurer profit; and

(L) Other relevant data consistent with generally accepted actuarial standards.

(II) The commissioner has the authority to promulgate rules to assure that the premium rates are reasonable in relation to the benefits provided, including the authority to regulate the compensation component of the premium rates and to limit the type and kind of benefits



to which the rates shall apply. The commissioner shall work with the regulated community in the development of the component rating elements. Each credit insurer that receives combined direct credit insurance premiums in this state in the amount of one hundred thousand dollars or more shall be subject to an administrative assessment of not more than one thousand five hundred dollars per insurer annually to provide the division of insurance with funds to perform duties required by this paragraph (c).

(3) All insurers providing credit insurance that are authorized by the commissioner to conduct business in Colorado shall submit to the commissioner:

(a) An annual report listing any policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders issued or delivered in this state. Such listing shall be submitted on or before July 15, 2000, and on or before July 1 of each subsequent year. Each annual report shall include a certification by an officer of the organization that, to the best of the officer's knowledge, each policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider in use complies with Colorado law.

(b) A list of new policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders. Such list shall also include a certification by an officer of the organization that, to the best of the officer's knowledge, each policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider in use complies with Colorado law.

(3.5) If an insurer elects to file pursuant to paragraph (c) of subsection (2.5) of this section, commencing July 1, 2002, the insurer shall offer only component rating for credit insurance premiums pursuant to subsection (2.5) of this section for all new policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery and phase in all existing creditor accounts to component rating accounts by no later than July 1, 2003.

(4) The commissioner shall have the power to examine and investigate insurers authorized to conduct business within Colorado to determine whether credit insurance policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders comply with the certification made by the insurer's officer and with Colorado law. The commissioner may promulgate rules regarding the elements necessary in an insurer's certification of compliance with Colorado law.

(5) and (6) (Deleted by amendment, L. 2000, p. 467, § 7, effective August 2, 2000.)

(7) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

(8) (a) If, after an examination or investigation of an insurer, the commissioner has cause to believe that such insurer or any rate, rating schedule, rating plan, or rating system made or used by the insurer does not comply with applicable requirements, the commissioner shall give notice in writing to such insurer, stating in the notice in what manner and to what extent such noncompliance is alleged to exist and specifying a reasonable time, not less than ten days after the date of receipt of such notice, by which such noncompliance shall be corrected.

(b) If the commissioner has good cause to believe that an insurer's noncompliance is willful or, if within the period prescribed by the commissioner in the notice issued in accordance with paragraph (a) of this subsection (8), the insurer does not either make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, the commissioner may hold a public hearing in accordance with section 24-4-105, C.R.S., on the subject of the noncompliance.

(c) (I) If, after a public hearing, the commissioner finds that any rate violates the applicable provisions of this title, the commissioner may issue an order to the insurer specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made after such time shall be prohibited. In such order, the commissioner may require a refund to the policyholder in an amount equal to the excess premium plus a maximum of eighteen percent interest. The amount of the refund, plus interest, shall be computed from the effective date of the rate used on the individual

policyholder contract to the commencement date of the hearing on the rate. Interest shall be computed as simple interest per annum.

(II) In addition to any other remedies or penalties provided by law, the commissioner may suspend or revoke, in whole or in part, the certificate of authority of any insurer that fails to comply with an order of the commissioner within the time specified in such order. The commissioner shall not suspend or revoke the license or certificate of authority for failure to comply with an order until the time prescribed for an appeal of the order has expired, or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension or revocation of a certificate of authority shall become effective. An order of suspension shall remain in effect for the period fixed by the commissioner unless the commissioner modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded, or reversed. No license shall be suspended or revoked except pursuant to a written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to such insurer specifying the alleged violation.

(d) (I) If, after a public hearing, the commissioner finds that the violation of any of the applicable provisions of this title was willful, the commissioner may suspend or revoke, in whole or in part, the certificate of authority of such insurer.

(II) If a failure to comply with an order of the commissioner within the time specified in such order is willful, the insurer shall be liable to the state in an amount not to exceed five thousand dollars for such failure. The commissioner shall collect such amount and may bring a civil action in the name of the people of the state of Colorado to enforce collection. Such penalty may be in addition to the remedy provided in subparagraph (I) of this paragraph (d). All moneys collected by the commissioner shall be paid into the general fund.

(e) Any finding, determination, rule, ruling, or order made by the commissioner pursuant to this subsection (8) is subject to judicial review by the court of appeals. Such review shall be performed in accordance with the provisions of section 24-4-106 (11), C.R.S.

**Source:** L. 69: p. 539, § 9. C.R.S. 1963: § 72-28-9. L. 92: (2) and (6) amended, p. 1571, § 89, effective May 20. L. 2000: (1), (2), (3), (4), (5), and (6) amended, p. 467, § 7, effective August 2. L. 2001: (2.5) added, p. 891, § 2, effective June 1; (1) amended, (2) repealed, and (3.5) and (8) added, pp. 892, 891, §§ 1, 3, effective July 1, 2002.

**Cross references:** For the legislative declaration contained in the 2000 act amending subsections (1), (2), (3), (4), (5), and (6), see section 1 of chapter 135, Session Laws of Colorado 2000.

**10-10-110. Premiums and refunds.** (1) (a) If an insurer has elected to file pursuant to section 10-10-109 (2.5) (b), the insurer may revise its schedules of premium rates from time to time and shall file such revised schedules with the commissioner. No insurer shall issue any credit insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner.

(b) If an insurer has elected to file pursuant to section 10-10-109 (2.5) (c), the insurer may file with the commissioner and use any premium rate or schedule of premium rates that is less than or equal to the premium rate established by the commissioner. Insurers shall not use premium rates higher than the premium rates established by the commissioner.

(2) (a) Upon prepayment in full of the indebtedness, all credit insurance issued on such indebtedness shall terminate.

(b) An insurer, upon receiving notice pursuant to section 5-4-108 (2), C.R.S., that a refund or credit of unearned premiums on insurance issued under this article is required by section 5-4-108 (1), C.R.S., shall make the appropriate refund or credit to the person entitled thereto within thirty days of receipt of such notice. The formula to be used in computing the refund or credit shall be filed with and approved by the commissioner. No refund of less than one dollar need be made.

(3) If a creditor requires a debtor to make any payment for credit insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immedi-



ately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(5) Nothing in this article shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

**Source:** L. 69: p. 540, § 10. C.R.S. 1963: § 72-28-10. L. 88: (2) R&RE, p. 340, § 2, effective July 1. L. 92: (1), (3), and (4) amended, p. 1572, § 90, effective May 20. L. 2001: (1) amended, p. 894, § 4, effective July 1, 2002.

**10-10-111. Issuance of policies.** All policies of credit insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein and shall be issued only through holders of licenses or authorizations issued by the commissioner.

**Source:** L. 69: p. 540, § 11. C.R.S. 1963: § 72-28-11. L. 92: Entire section amended, p. 1572, § 91, effective May 20.

**10-10-112. Claims.** (1) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of such claimant to one specified.

(3) No plan or arrangement shall be used whereby any person, firm, or corporation, other than the insurer or its designated claim representative, is authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, but a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

**Source:** L. 69: p. 540, § 12. C.R.S. 1963: § 72-28-12.

**10-10-113. Existing insurance - choice of insurer.** When credit insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

**Source:** L. 69: p. 541, § 13. C.R.S. 1963: § 72-28-13. L. 92: Entire section amended, p. 1572, § 92, effective May 20.

**10-10-114. Enforcement.** The commissioner may, after notice and hearing, issue such rules and regulations as he deems appropriate for the supervision of this article. If the commissioner finds that there has been a violation of this article or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings, together with an order for compliance by a specified date. Such order is binding on the insurer or other person authorized or licensed by the commissioner on the date specified, unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction.

**Source:** L. 69: p. 541, § 14. C.R.S. 1963: § 72-28-14.

**10-10-115. Judicial review.** Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by the court of appeals by following the procedure set forth in section 24-4-106 (11), C.R.S.

**Source:** L. 69: p. 541, § 15. C.R.S. 1963: § 72-28-15. L. 92: Entire section amended, p. 1572, § 93, effective May 20.

**10-10-116. Penalties.** In addition to any other penalty provided by law, any person, firm, or corporation which violates an order of the commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the division of insurance a sum not to exceed two hundred fifty dollars which may be recovered in a civil action; except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed one thousand dollars. The commissioner, in his discretion, may revoke or suspend the insurance license or certificate of authority of the person, firm, or corporation guilty of such violation. Such order for suspension or revocation shall be upon notice and hearing and shall be subject to judicial review as provided in section 10-10-115.

**Source:** L. 69: p. 541, § 16. C.R.S. 1963: § 72-28-16.

**10-10-117. Insurance expense not computed as cost of loan.** In connection with insurance which is permitted under this article, the premium and any gain or advantage to the creditor, or to any employee, affiliate, or associate of the creditor, from such insurance or its sale shall not be deemed to be an additional or further interest, discount, or charge, and the creditor may receive commissions on the premium paid for such insurance if the creditor or an employee of the creditor is a duly licensed insurance broker or agent under the insurance laws of the state of Colorado.

**Source:** L. 69: p. 541, § 17. C.R.S. 1963: § 72-28-17.

**Cross references:** Agents and brokers referenced in this section are referred to as insurance producers, pursuant to part 4 of article 2 of this title. (See chapter 257, Session Laws of Colorado 1993.)

**10-10-118. Charge accounts.** Nothing in this article shall be construed to permit credit insurance to be required by any creditor for revolving charge accounts or any other charge accounts for the purchase of goods or services.

**Source:** L. 69: p. 541, § 18. C.R.S. 1963: § 72-28-18. L. 92: Entire section amended, p. 1572, § 94, effective May 20.

**10-10-119. Truncated coverage.** (1) If the debtor elects truncated coverage, at the time of election the creditor shall inform the debtor in writing of the term of the insurance coverage and that the coverage will terminate prior to the scheduled maturity date of the indebtedness.

(2) A group certificate or individual policy providing truncated credit insurance coverage shall disclose the term of the truncated insurance coverage and specify that the term of insurance coverage will terminate prior to the scheduled maturity date of the indebtedness. The termination disclosure shall appear in prominent type on the first page of the group certificate or individual policy.

**Source:** L. 2000: Entire section added, p. 151, § 2, effective August 2.



## TITLE INSURANCE

### ARTICLE 11

#### Title Insurance Code of Colorado

**Law reviews:** For article, "1987 ALTA Insurance Revisions: An Owner's Perspective — Parts I and II", see 17 Colo. Law. 445 and 627 (1988).

10-11-101.	Short title.	10-11-116.	Title insurance agents licensed.
10-11-102.	Definitions.	10-11-117.	Title insurance agents - certain names prohibited.
10-11-103.	Compliance with article required.	10-11-118.	Title insurance - rules.
10-11-104.	Corporate form required.	10-11-119.	Laws applicable.
10-11-105.	Financial requirements prior to this article.	10-11-120.	Corporate existence preserved.
10-11-106.	Determination of insurability required.	10-11-121.	Application of article - other laws applicable.
10-11-107.	Powers.	10-11-122.	Title commitments.
10-11-108.	Prohibitions.	10-11-123.	Notification of severed mineral estates.
10-11-109.	Unearned premium reserve.	10-11-124.	Affiliated business arrangements - rules - investigative information shared with division of real estate.
10-11-110.	Amount of unearned premium reserve - release.	10-11-125.	Fees, salaries, compensation, or other payments.
10-11-111.	Reserve for unpaid losses and loss expense.	10-11-126.	Affiliated business arrangements - enforcement - penalties.
10-11-112.	Net retained liability.		
10-11-113.	Power to reinsure.		
10-11-114.	Legal investments and admitted assets.		
10-11-115.	Prior investments.		

**10-11-101. Short title.** This article shall be known and may be cited as the "Title Insurance Code of Colorado".

**Source:** L. 69: p. 520, § 1. C.R.S. 1963: § 72-26-1.

### ANNOTATION

**Law reviews.** For article, "Covering the Gap and Other Arcane Title Insurance Tips", see 12 Colo. Law. 1785 (1983).

**10-11-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Affiliated business arrangement" means an arrangement in which:

(a) (I) A settlement producer or an associate of such producer has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in, a title insurance company or title insurance agent; or

(II) A title insurance company or a title insurance agent who has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in a settlement producer; and

(b) (I) Either the settlement producer or the agent of the settlement producer directly or indirectly refers settlement service business to that title insurance company or title insurance agent or affirmatively influences the selection of that title insurance company or title insurance agent; or

(II) Either the title insurance company or the title insurance agent directly or indirectly refers settlement services business to a settlement producer or associate or affirmatively influences the selection of the settlement producer or associate.

(1.5) "Alien title insurance company" means a title insurance company incorporated or

organized under the laws of a foreign nation, or of any province or territory thereof, not included under the definition of a foreign title insurance company.

(2) "Applicants for insurance" includes all those, whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance and who at the time of such application are not agents for a title insurance company.

(2.5) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

- (a) A spouse, parent, or child of such person;
- (b) A corporation or business entity that controls, is controlled by, or is under common control with such person;
- (c) An employer, officer, director, partner, franchiser, or franchisee of such person; or
- (d) Anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.

(3) The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, and the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.

(3.5) "Closing and settlement services" means providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust.

(3.7) "Gap coverage" means insuring, guaranteeing, or indemnifying owners of real property, or others interested therein, against loss or damage suffered by reason of matters appearing of record in the office of the clerk and recorder subsequent to the date of issuance of a title insurance commitment and prior to the recording of closing documents for the real property concerned.

(4) "Net retained liability" means the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with subsection (7) of this section, after the purchase of reinsurance.

(5) "Premium" for title insurance is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy, including the cost of doing business and a reasonable profit, but excluding service charge, if any.

(6) "Service charge" is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance to cover the cost of procuring and examining evidence of title.

(6.5) (a) "Settlement producer" means a person who is in a position to refer business that is incident to or a part of a settlement service. "Settlement producer" includes, but is not limited to, a person who:

- (I) Buys or sells an interest in real property;
  - (II) Lends or borrows moneys with an interest in real property as security;
  - (III) Acts as an agent, representative, attorney, or employee of a person who:
    - (A) Buys or sells an interest in real property; or
    - (B) Lends or borrows moneys with an interest in real estate as security;
  - (IV) Is an associate of a person described in this subsection (6.5).
- (b) Nothing in this subsection (6.5) shall be construed to include a title insurance company or a title insurance agent.

(6.7) "Settlement service" means any service provided in connection with a real estate settlement. "Settlement services" include, but are not limited to, the following:

- (a) Title searches;



- (b) Title examinations;
  - (c) The provision of title certificates;
  - (d) Title insurance;
  - (e) Services rendered by an attorney;
  - (f) The preparation of title documents;
  - (g) Property surveys;
  - (h) The rendering of credit reports or appraisals;
  - (i) Pest and fungus inspections;
  - (j) Services rendered by a real estate broker;
  - (k) Services rendered by a real estate appraiser;
  - (l) Home inspection services;
  - (m) The origination of a loan;
  - (n) The taking of a loan application;
  - (o) Processing of a loan;
  - (p) Underwriting and funding of a loan;
  - (q) Escrow handling services;
  - (r) The handling of the processing; and
  - (s) Closing of settlement.
- (7) "Single insurance risk" means the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts. Any such policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.

(8) "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

(9) "Title insurance agent" means a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies in its behalf.

(10) "Title insurance company" means any domestic company organized under the provisions of this article for the purpose of insuring titles to real property; any title insurance company organized under the laws of another state or foreign nation and licensed to insure titles to real estate within this state; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before July 1, 1969, and which meets the requirements of this article.

**Source:** L. 69: p. 520, § 1. C.R.S. 1963: § 72-26-2. L. 87: (3) amended and (3.5) and (3.7) added, p. 446, § 1, effective April 30. L. 2006: (1) amended and (1.5), (2.5), (6.5), and (6.7) added, p. 264, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "'Good Funds' Law and New Title Insurance Regulations", see 18 Colo. Law. 233 (1989).

**10-11-103. Compliance with article required.** On and after July 1, 1969, no company shall underwrite or issue a policy of title insurance or otherwise engage in the business of title insurance in this state unless authorized by the provisions of this article to transact such a business.

**Source:** L. 69: p. 521, § 1. C.R.S. 1963: § 72-26-3.

## ANNOTATION

**This article provides a rather comprehensive set of regulations** for title insurance companies and specifically provides that title insurance rates shall be regulated in the manner provided for regulation of casualty and surety insurance. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

Plaintiff's contention which characterized Colorado's purported regulation of the title insurance business as a "mere sham and a pretense" and not affording "effective" and "meaningful" regulation does not stand up when the Colorado regulatory statutes are examined. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

**Both domestic and foreign title insurance companies subject to regulation.** Both domestic and foreign title insurance companies are and have been subject to the general regulatory pow-

ers vested in the state insurance commissioner. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

**State's unfair practices act and an illegal restraint of trade act are applicable** to the business of title insurance. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

**Effect of regulation on private antitrust action.** The business of title insurance is the "business of insurance", and the state of Colorado regulates the title insurance business to the end that under the McCarran act, a federal statute exempting the insurance business from the federal antitrust laws if it is regulated by the state, a private antitrust action would not lie against certain title insurance companies doing business in Colorado. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973).

**10-11-104. Corporate form required.** Any domestic title insurance company formed after July 1, 1969, shall be organized as a stock corporation as provided in section 10-3-101.

**Source:** L. 69: p. 521, § 1. C.R.S. 1963: § 72-26-4.

**10-11-105. Financial requirements prior to this article.** (1) Every domestic title insurance company which on July 1, 1969, has the capital required by law and whose reserve fund required by law has been approved by the state bank commissioner shall have until July 1 in the tenth year after July 1, 1969, to comply with the financial requirements of this article, but the capital and reserve fund of each such title insurance company shall at no time be less than that required by law immediately prior to July 1, 1969.

(2) The reserve fund required by law immediately prior to July 1, 1969, for each domestic title insurance company engaged in the business of title insurance shall be supervised by the commissioner on and after July 1, 1969. As soon as practicable, the state bank commissioner shall furnish to the commissioner a list of all such title insurance companies and an inventory of securities and deposits approved by said bank commissioner for the reserve fund of each such company, and shall deliver to the commissioner all such securities and deposits then on deposit with the state bank commissioner and all safe deposit box keys, deposit receipts, certificates of deposit, and other evidences or means of control thereof to the commissioner. Every bank, savings and loan association, or other escrow or depository agent is authorized to accept the substitution of the commissioner for the state bank commissioner on any certificate of deposit or deposit receipt or any authority to enter a safe deposit box with reference to any reserve fund of a title insurance company. Every such bank, savings and loan association, or other escrow or depository agent and the state bank commissioner shall be held harmless from any liability as a result of such substitution and shall take such action as may be necessary or advisable to effect such substitution.

**Source:** L. 69: p. 521, § 1. C.R.S. 1963: § 72-26-5.

**10-11-106. Determination of insurability required.** (1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than seven years after the policy or



contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company, or the agent of the title insurance company, may, in the regular course of business, establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This section shall not apply to either a company assuming no primary liability in a contract of reinsurance or a company acting as a coinsurer if one of the other coinsuring companies has complied with this section.

(2) A title insurance company shall not be obligated to make a written disclosure to its prospective insureds prior to the issuance of a title insurance policy of the following documents if a reasonable examination of title referred to in subsection (1) of this section reveals a recorded document that:

- (a) Is a spurious lien or spurious document as defined in section 38-35-201, C.R.S.;
- (b) Is not, according to sound underwriting practices for title insurance companies, an impairment of record concerning the property to be insured; or
- (c) Although it may purport to do so, does not encumber the property to be insured.

**Source:** L. 69: p. 522, § 1. C.R.S. 1963: § 72-26-6. L. 97: Entire section amended, p. 38, § 4, effective March 20. L. 99: (1) amended, p. 27, § 1, effective August 4.

**10-11-107. Powers.** (1) Every title insurance company has the following powers:

- (a) To do the business defined in section 10-11-102 (3) and (8);
- (b) To own, manage, and maintain sets of abstract books and to make, compile, and sell abstracts of title to real estate;
- (c) To acquire by purchase or otherwise, and to hold, sell, mortgage, or otherwise dispose of, real estate and personal property, or any interest therein, either within or without the state of Colorado and to loan or borrow money upon such real estate or personal property.

**Source:** L. 69: p. 522, § 1. C.R.S. 1963: § 72-26-7. L. 83: (1)(b) amended, p. 512, § 1, effective May 16.

#### ANNOTATION

**Law reviews.** For article, “‘Good Funds’ Law and New Title Insurance Regulations”, see 18 Colo. Law. 233 (1989).

**10-11-108. Prohibitions.** (1) A title insurance company or title insurance agent shall not:

- (a) Engage in the business of guaranteeing the payment of the principal or the interest of bonds, notes, or other obligations;
- (b) Transact, underwrite, or issue any kind of insurance other than title insurance;
- (c) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;
- (d) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this article, “services actually rendered” shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices; “services actually rendered” shall not include the mere referral of title insurance business.

(2) Nothing in this article, or in any other provision of law governing the insurance industry, shall be construed to prohibit:

- (a) Compensation by a title insurance company of an attorney who is licensed to practice in Colorado for services actually rendered in connection with a real estate

transaction, regardless of whether such attorney represents a client in such real estate transaction. Compensation of the attorney for services actually rendered shall not include the payment of an hourly fee paid by the client combined with a payment from the title insurance company for the same service; except that prior to issuing any title insurance commitment, such attorney shall disclose to any party represented by such attorney in the transaction for which the commitment shall be issued that such attorney may be compensated for the issuance of such title insurance commitment.

(b) Payment to any person of a bona fide salary or compensation for payment of goods and facilities actually furnished or for services actually rendered.

(3) Any party to a transaction which is subject to this section shall have a right of action for any actual loss or damage resulting from any violation of this section.

**Source:** L. 69: p. 522, § 1. C.R.S. 1963: § 72-26-8. L. 92: Entire section amended, p. 1748, § 1, effective April 24.

#### ANNOTATION

**Law reviews.** For article, "Affiliated Business Arrangements: Compliance with RESPA and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

**By failing to require "good funds" to complete a real estate closing in violation of § 38-**

**35-125 and this section, title insurance agency injected an "illegal purpose" into the situation and the bargain became illegal.** Guardian Title Agency, LLC v. Matrix Capital Bank, 141 F. Supp.2d 1277 (D. Colo. 2001).

**10-11-109. Unearned premium reserve.** (1) In lieu of those reserves required for other insurance companies, every domestic title insurance company, and every foreign or alien title insurance company which under the state of domicile is not required to maintain a substantially equivalent unearned premium reserve, shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall, at all times and for all purposes, constitute the unearned portions of premiums due or received and shall be charged as a reserve liability of such title insurance company in determining its financial condition.

(2) The unearned premium reserve shall be retained and held by such title insurance company for the protection of the policyholders' interest in policies which have not expired. Except upon liquidation, dissolution, or insolvency, assets equal to the amount of such reserve shall not be subject to distribution among depositors or other creditors or stockholders of such title insurance company until all claims of policyholders or holders of other title insurance contracts or agreements of such title insurance company have been paid in full and all liability on the policies or other title insurance contracts or agreements, whether contingent or actual, has been discharged or lawfully reinsured. Income from the investment of the amount of such reserve shall be the unrestricted property of the title insurance company.

**Source:** L. 69: p. 522, § 1. C.R.S. 1963: § 72-26-9.

**10-11-110. Amount of unearned premium reserve - release.** (1) The unearned premium reserve of every title insurance company required to maintain such reserves in this state shall consist of:

(a) The amount of the unearned premium reserve held as of July 1, 1969, pursuant to law; and

(b) The amount of all additions required to be made to such reserve by this section, less the withdrawals therefrom as permitted by this section.

(2) On and after July 1, 1969, every title insurance company shall add to its unearned premium reserve, in respect to each title insurance policy, leasehold policy, contract, or reinsurance agreement issued by it, a sum equal to one dollar for each such policy, contract, or agreement, plus fifteen cents for each one thousand dollars face amount of net retained liability on each such policy, contract, or reinsurance agreement, as defined in section



10-11-102 (4), or the amount reinsured by it, and shall separately record the aggregate amounts so set aside and reserved in respect to such policies, contracts, or agreements written in each calendar year.

(3) The amounts set aside as additions to the unearned premium reserve shall be deducted from income in determining net profits of any title insurance company.

(4) For the purposes of determining the amounts of the unearned premium reserve that may be withdrawn pursuant to subsection (5) of this section, all policies, contracts of title insurance, or reinsurance agreements of title insurance shall be considered as dated July 1 in the year of issue.

(5) On and before December 31, 2000, the aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subsection (2) of this section shall be released from said reserve and restored to income pursuant to the following formula: One-tenth of said aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of said aggregate sum on July 1 of each succeeding year thereafter until the entire sum has been so released and restored to income. On and after January 1, 2001, the aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subsection (2) of this section shall be released from said reserve and restored to income in accordance with the formula prescribed by nationally recognized insurance statutory accounting principles.

(6) (Deleted by amendment, L. 2001, p. 286, § 11, effective March 30, 2001.)

(7) If substantially the entire outstanding liability under all policies, contracts of title insurance, and reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this state shall constitute, in its entirety, unearned portions of original premiums and shall be added to its unearned premium reserve, and shall be deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less than two-thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance.

**Source:** L. 69: p. 523, § 1. C.R.S. 1963: § 72-26-10. L. 2001: (5) and (6) amended, p. 286, § 11, effective March 30.

**10-11-111. Reserve for unpaid losses and loss expense.** (1) Each title insurance company, in addition to other reserves, shall at all times establish and maintain reserves against unpaid losses, and against loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred by reason of every claim presented, pursuant to notice from or on behalf of the policyholder, of a title defect in or lien or adverse claim against the title insured that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of the items so estimated shall be the total amounts of the reserves against unpaid losses and loss expenses of such title insurance company.

(2) The amounts so estimated may be revised from time to time as circumstances warrant but shall be redetermined at least once each year.

(3) The amounts set aside in such reserves in any year shall be deducted in determining the net profits for such year of any title insurance company.

**Source:** L. 69: p. 524, § 1. C.R.S. 1963: § 72-26-11.

**10-11-112. Net retained liability.** The net retained liability of any title insurance company under any single insurance risk, as defined in section 10-11-102 (4) and (7), shall not exceed fifty percent of the net amount remaining after deducting from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves the value, if any, assigned in such summation to its title plant, all as shown in its most recent report on file with the commissioner. The same limitation shall apply to any secondary risk assumed by

means of reinsurance or to any policy of excess coinsurance; except that, whenever the primary retained liability of a ceding company equals or exceeds ten percent of the single insurance risk liability, the net retained or assumed liability limit of this section may be increased by an additional two hundred fifty thousand dollars, but in no event above one hundred percent of the net amount remaining after deducting from the sum of its capital and surplus the value, if any, assigned in such summation to its title plant, all as shown by its most recent report on file with the commissioner. Nothing in this section is intended to limit the amount of a single insurance risk, as defined in section 10-11-102 (7), that may be written by a title insurance company; but it shall cede to one or more other title reinsurers, on or before the effective date of such writing, such portion of the said risk as shall be sufficient to bring its net retained liability thereunder within the limits prescribed in this section; and each such cession of risk shall be within the limits of this section as applied to the sum of the capital, surplus, unearned premium reserve, and voluntary reserves, less the value, if any, assigned in such summation to the title plants of the reinsuring company, as shown by its most recent report on file with the supervisory agency in the state of its domicile.

**Source:** L. 69: p. 524, § 1. C.R.S. 1963: § 72-26-12.

**10-11-113. Power to reinsure.** Any title insurance company may cede reinsurance of all or any part of its liability under one or more of its policies, contracts, or reinsurance agreements of title insurance to any reinsurer which meets or exceeds the financial requirements of a title insurance company to do business in this state and is authorized to engage in the business of reinsurance of title insurance in this or any other state; but no larger amount of reinsurance shall be ceded to any reinsurer on a single policy or contract of title insurance, or on any single insurance risk, as defined in section 10-11-102 (7), than such reinsurer would be permitted to retain if authorized to engage in the business of title insurance in this state. Any title insurance company may also reinsure policies of title insurance issued by other insurance companies on risks located in this state or elsewhere. Any domestic title insurance company or any foreign or alien title insurance company authorized to do business in this state shall pay to this state taxes required on all business taxable within this state and reinsured, as provided in this section, with any foreign or alien company not authorized to do business within this state. Issuance of contracts of reinsurance by a reinsurer not authorized to engage in the business of title insurance in this state but authorized to engage in the business of title insurance or in the business of reinsurance of title insurance in any of the United States, which contracts reinsure policies of title insurance issued by a title insurance company authorized to engage in the business of title insurance in this state on real property located in this state, shall not of itself constitute the doing of business in this state by such reinsurer.

**Source:** L. 69: p. 525, § 1. C.R.S. 1963: § 72-26-13.

**10-11-114. Legal investments and admitted assets.** (1) Title insurance companies shall comply with the investment requirements for other insurance companies under the laws of this state but, in addition, may invest in a title plant. Such title plant shall be considered an admitted asset as provided by nationally recognized insurance statutory accounting principles. The real estate in which the title plant is housed shall be considered an investment under section 10-3-218. Subject to the limitations of this section and with the approval of the commissioner, a title insurance company may enter into agreements with one or more other title insurance companies authorized to do business in this state whereby such companies shall participate in the ownership, management, and control of a title plant to serve the needs of all such companies, or such companies may hold stock of a corporation owning and operating a title plant for such purposes.

(2) A title insurance company shall include as an admitted asset accounts receivable relating to gross premiums, less agent retention, in the course of collection. Accounts receivable that are more than ninety days past due from the date of notification of the issuance of the policy shall not be included as an admitted asset.



**Source:** L. 69: p. 525, § 1. C.R.S. 1963: § 72-26-14. L. 2001: Entire section amended, p. 287, § 12, effective March 30.

**Cross references:** For the regulation of insurance company's investments, see §§ 10-3-213 to 10-3-237.

**10-11-115. Prior investments.** Any investment of a title insurance company lawfully acquired before July 1, 1969, and which but for this section would be considered ineligible as an investment on such date shall be disposed of within five years from such date. The commissioner, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurance company and its policyholders, may extend the period for sale or disposal of such investment for a further reasonable time, in no event to exceed three years.

**Source:** L. 69: p. 525, § 1. C.R.S. 1963: § 72-26-15.

**10-11-116. Title insurance agents licensed.** (1) (a) Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, except as otherwise provided in this section.

(b) Full-time employees of a corporate contractual agent of a title insurance company authorized by such company or such contractual agent to issue or countersign binders or policies in behalf of such title insurance company shall be so licensed.

(c) A license shall be issued to an attorney-at-law licensed to practice in this state if a title insurance company notifies the commissioner in writing of the name and address of each such attorney it desires to appoint as its agent and upon payment of the fees required by sections 10-3-207 and 24-31-104.5, C.R.S.

(2) No individual, partnership, corporation, or other legal entity contractually authorized by a title insurance company as its agent to issue or countersign binders or policies on its behalf, other than an attorney otherwise qualified under subsection (1) (c) of this section, shall be licensed unless, in addition to all other requirements of this article and of articles 1 to 3 of this title, the agent possesses actual paid-in cash capital, or, if an individual, has a net worth, of at least ten thousand dollars.

(3) Title insurance agents possessing a title plant, as described in section 10-11-114, may satisfy the requirements of subsection (2) of this section by submitting to the commissioner of insurance, in a form acceptable to the commissioner, the written affidavit of a certified public accountant stating that the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section, or, alternatively, that the aggregate of the agent's paid-in cash capital or net worth, as applicable, and the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section.

(4) A licensed contractual agent of a title insurance company shall preserve and retain its closing and settlement services and escrow files for a period of not less than seven years after the closing, or completion, of said files. In lieu of retaining the original files, a licensed contractual agent of a title insurance company may, in its regular course of business, establish a system whereby the files are recorded, copied, or reproduced by any photographic, microfilm, or other process which accurately reproduces or forms a durable medium for reproduction of the original files. Upon cessation of business by a contractual agent of a title insurance company the files shall be deposited with the division of insurance or with a title insurance company or licensed contractual agent of a title insurance company authorized by the division of insurance.

**Source:** L. 69: p. 526, § 1. C.R.S. 1963: § 72-26-16. L. 77: (1)(a) amended, p. 502, § 4, effective January 1, 1978. L. 91: (2) to (4) added, p. 1217, § 1, effective July 1. L. 93: (1)(a) amended, p. 1390, § 7, effective January 1, 1995. L. 99: (4) amended, p. 27, § 2, effective August 4. L. 2010: (1)(c) amended, (HB 10-1385), ch. 204, p. 883, § 5, effective May 5. L. 2012: (1)(c) amended, (SB 12-110), ch. 158, p. 561, § 7, effective July 1.

**10-11-117. Title insurance agents - certain names prohibited.** On and after July 1, 1969, no agent for a title insurance company shall adopt a firm name containing the words "title insurance", "title guaranty", or "title guarantee", unless such words are followed by the words "agent" or "agency". The words "agent" or "agency" must be in the same size and type as the words preceding them. This section shall not apply to any title insurance company acting as agent for another title insurance company.

**Source:** L. 69: p. 526, § 1. C.R.S. 1963: § 72-26-17.

**10-11-118. Title insurance - rules.** (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title.

(2) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner the new or amended rate or fee, with justification for the new or amended rate or fee. Each filing shall set forth its effective date, which shall be no earlier than thirty days after its receipt by the commissioner. The commissioner may promulgate rules to implement this subsection (2).

(3) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

**Source:** L. 69: p. 526, § 1. C.R.S. 1963: § 72-26-18. L. 79: (1) amended, p. 377, § 14, effective July 1. L. 81: (2) R&RE, p. 562, § 2, effective July 1. L. 2000: Entire section amended, p. 468, § 8, effective August 2. L. 2001: (2)(b) amended, p. 19, § 1, effective March 9. L. 2009: Entire section amended, (HB 09-1155), ch. 22, p. 107, § 1, effective August 5.

**Cross references:** For the legislative declaration contained in the 2000 act amending this section, see section 1 of chapter 135, Session Laws of Colorado 2000.

#### ANNOTATION

**Law reviews.** For article, "New Title Insurance Rates Authorized", see 11 Colo. Law 931 (1982).

**10-11-119. Laws applicable.** In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions of this article, shall apply to the business of title insurance and to title insurance companies.

**Source:** L. 69: p. 526, § 1. C.R.S. 1963: § 72-26-19.

**10-11-120. Corporate existence preserved.** The repeal of article 12 of chapter 31, C.R.S. 1963, shall not affect the corporate existence of corporations organized under the provisions of said article 12 if such corporations are on July 1, 1969, engaged in the business of title insurance or title insurance agents in this state. Such corporations in all other respects shall be subject to the provisions of this article and shall file with the commissioner a copy of its articles of incorporation and all amendments thereto certified by the secretary of state.

**Source:** L. 69: p. 527, § 5. C.R.S. 1963: § 72-26-20.

**10-11-121. Application of article - other laws applicable.** The provisions of this article shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title insurance, policyholders, and persons and business



entities deemed to be engaged in the business of title insurance. In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions or purposes of this article, shall apply to such persons and entities.

**Source:** L. 69: p. 528, § 6. C.R.S. 1963: § 72-26-21. L. 92: Entire section amended, p. 1573, § 95, effective May 20.

**10-11-122. Title commitments.** (1) Every title insurance agent or title insurance company shall provide, along with each title commitment issued for the sale of residential real property as defined in section 39-1-102 (14.5), C.R.S., a statement disclosing the following information:

- (a) That the subject real property may be located in a special taxing district;
- (b) That a certificate of taxes due listing each taxing jurisdiction shall be obtained from the county treasurer or the county treasurer's authorized agent;
- (c) That information regarding special districts and the boundaries of such districts may be obtained from the board of county commissioners, the county clerk and recorder, or the county assessor.

(2) Failure of a title insurance agent or a title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.

(3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

**Source:** L. 91: Entire section added, p. 779, § 1, effective June 4. L. 92: (3) amended, p. 2167, § 5, effective June 2; IP(1), (1)(b), and (2) amended, p. 994, § 3, effective July 1.

**10-11-123. Notification of severed mineral estates.** (1) For purposes of this section:

- (a) "Mineral estate" means a mineral interest in real property.
- (b) "Severed" means that the surface owner does not own all or any part of the mineral estate.

(c) "Surface estate" means an interest in real property that does not include the full mineral estate as shown by recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated.

(d) "Surface owner" means the owner of the surface estate and any purchaser with rights under a contract to purchase all or part of the surface estate.

(2) A title insurance agent or title insurance company shall provide, as part of each title commitment for the issuance of an owner's title insurance policy, the following written statement when it is determined that a mineral estate has been severed from the surface estate:

- (a) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

- (b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

(3) In determining compliance with this section, a title insurance agent or title insurance company may rely on recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated and shall not be liable for any errors or omissions in such records.

(4) A title insurance company or title insurance agent may rely on any document purporting to sever mineral interests to act as notice of such severance when such document is recorded in the office of the county clerk and recorder in the county in which the real property is situated.

(5) A title insurance agent or title insurance company shall be deemed to be in compliance with this section when it relies on any document purporting to sever mineral interests or to act as notice of such severance when such document is recorded in the office of the county clerk and recorder of the county in which the real property is situated. No title insurance agent or title insurance company shall be liable for obligations above, or for an amount in excess of, those stated in the owner's policy of title insurance issued pursuant to the commitment for failure to comply with the provision of subsection (2) of this section.

**Source: L. 2001:** Entire section added, p. 485, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Tension Beneath the Surface: The Evolving Relationship Between Surface and Mineral Estates", see 30 Colo. Law. 67 (December 2001).

**10-11-124. Affiliated business arrangements - rules - investigative information shared with division of real estate.** (1) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 10-11-108 (1).

(b) A title insurance company or a title insurance agent making a referral as part of an affiliated business arrangement shall disclose the affiliation in accordance with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq.

(c) Neither a title insurance company nor a title insurance agent shall require the use of an affiliated business arrangement or a particular settlement producer as a condition of obtaining title insurance services from the company or agent. For the purposes of this paragraph (c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(2) The commissioner may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. Nothing in this subsection (2) shall be construed to increase a fee or create a licensure program for affiliated business arrangements. The commissioner shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commissioner shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commissioner shall consult with the real estate commission pursuant to section 12-61-113.2 (5), C.R.S., concerning rules the real estate commission may promulgate concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(3) The division may share information gathered during an investigation of an affiliated business arrangement with the division of real estate.

**Source: L. 2006:** Entire section added, p. 266, § 2, effective July 1. **L. 2007:** (1)(b) and (2) amended, p. 2019, § 10, effective June 1.

#### ANNOTATION

**Law reviews.** For article, "Affiliated Business Arrangements: Compliance with RESPA and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

**10-11-125. Fees, salaries, compensation, or other payments.** (1) Nothing in section 10-11-124 or 10-11-126 shall be construed to prohibit payment of a fee to:

(a) An attorney for services actually rendered;



(b) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance; or

(c) A lender to its duly appointed agent for services actually performed in the making of a loan.

(2) Nothing in section 10-11-124 or 10-11-126 shall be construed to prohibit payment to any person of:

(a) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed; or

(b) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(3) It shall not be a violation of section 10-11-124:

(a) For an affiliated business arrangement to require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(b) For an affiliated business arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

**Source: L. 2006:** Entire section added, p. 267, § 2, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Affiliated Business Arrangements: Compliance with RESPA and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

**10-11-126. Affiliated business arrangements - enforcement - penalties.** (1) The commissioner shall have the same remedies available to him or her as those available to the administrator of the department of housing and urban development in the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2607.

(2) In addition to any other remedies available to the commissioner pursuant to this title, after notice and a hearing pursuant to section 24-4-105, C.R.S., the commissioner may assess a penalty for a violation of this article or a rule promulgated under this article. The penalty shall be the amount of remuneration improperly paid and shall be paid to the person aggrieved by the violation or apportioned among multiple aggrieved persons as determined by the commissioner.

(3) No person shall be liable for a violation of section 10-11-124 if such person proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid such error.

**Source: L. 2006:** Entire section added, p. 268, § 2, effective July 1. **L. 2007:** (1) amended, p. 2020, § 11, effective June 1.

#### ANNOTATION

**Law reviews.** For article, "Affiliated Business Arrangements: Compliance with RESPA and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

MUTUAL INSURANCE

ARTICLE 12

Mutual Insurance

PART 1

PART 2

MUTUAL INSURANCE COMPANIES  
AND MUTUAL PROTECTIVE  
ASSOCIATIONS

EMPLOYERS' MUTUAL  
LIABILITY INSURANCE

10-12-201 to  
10-12-218. (Repealed)

PART 3

MUTUAL BENEFIT ASSOCIATIONS

10-12-301 to  
10-12-333. (Repealed)

PART 4

MUTUAL INSURANCE COMPANIES

- 10-12-101. Mutual protective associations.
- 10-12-102. Association to file articles - by-laws.
- 10-12-103. Noncompliance a misdemeanor - penalty.
- 10-12-104. Fees - annual statement - tax.
- 10-12-105. Guaranty fund of mutual companies.
- 10-12-106. Fees of mutual companies.
- 10-12-107. Ownership of profits.
- 10-12-108. Mutual insurance companies - corporation policyholders.
- 10-12-109. Mutual insurance companies - voting powers.
- 10-12-110. Mutual insurance companies - premiums and premium deposits.
- 10-12-111. Mutual life assessment companies prohibited - when.
- 10-12-112. Validation clause.

- 10-12-401. Legislative declaration.
- 10-12-402. Scope of provisions.
- 10-12-403. Mutual insurer defined.
- 10-12-404. Company name.
- 10-12-405. Applicability of other code and corporation code provisions.
- 10-12-406. Lines of business.
- 10-12-407. Bylaws.
- 10-12-408. Liability of members.
- 10-12-409. Dividends.
- 10-12-410. Insolvency or impairment of mutual insurance company.
- 10-12-411. Conversion of domestic mutual insurer to domestic stock or other form of insurer.

PART 1

MUTUAL INSURANCE COMPANIES AND  
MUTUAL PROTECTIVE ASSOCIATIONS

**10-12-101. Mutual protective associations.** (1) One hundred or more persons, desiring to form and be members of a mutual protective association, are authorized to and may insure each other against loss or damage by any peril or perils resulting in physical loss or damage to property, including theft of personal property, situated in this state in which said persons have an insurable interest if said persons first subscribe their names and addresses to articles of association which provide and set forth:

(a) The name of said association, which shall contain the words “protective association”;

(b) The city or town where the principal office of the association is located and where the books and records are maintained;

(c) The names and addresses of directors who shall serve for the first year of existence of the association, which number of directors shall not be less than three nor more than seven and which directors must be members;

(d) That members shall be entitled to one vote each and shall elect directors at each annual meeting for a term not to exceed three years, after the first year of existence. The members of said association shall consist of the one hundred or more persons subscribing the articles of association who shall also be policyholders bona fide applicants for insurance



at the time their names are subscribed to the articles and, in addition, all other persons becoming policyholders thereafter for the period during the year in which their policies are in full force and effect. The policies of the members shall be effective concurrently with, or within one year from, the granting of a certificate of authority to said association. If the period of insurance coverage is less than a year, each member will be a full-fledged member for a complete year.

(e) The specific risks which said association purposes to insure, which shall be one or more of the risks specified in this section;

(f) The manner in which premiums will be charged or assessments levied against the members for the purpose of paying losses and expenses of management of said association; except that each association organized on or after April 20, 1949, and authorized to insure against any insurable risks specified in the articles of association and all said associations which charge an advance premium instead of operating on the pure assessment basis shall at all times maintain on deposit with the commissioner a sum equal to twenty-five thousand dollars in cash or convertible securities as a guaranty fund to guarantee faithful performance of the contract. Upon dissolution, such guaranty fund shall become the property of the person who deposits it, subject to all claims provided for in sections 10-12-101 to 10-12-104.

(2) County mutual protective associations now operating in Colorado upon a pure assessment plan and such associations which do not write insurance upon growing crops but operate upon an assessment plan with the stated liability of each member set forth in its policies need not maintain any deposit with the commissioner nor maintain any reserves as provided in this section.

(3) Each association operating on an advance premium system and authorized to insure against any insurable risks specified in this section shall allocate and set aside at least sixty-five percent of all annual gross premiums received under all policies as a loss reserve to be used only for the payment of losses. In the event said loss reserve is insufficient to meet all adjusted loss claims for the year, an amount not exceeding five percent of the net premiums received shall be taken from the guaranty fund and added to the loss reserve to make up any deficit. The amount of said loss reserve then shall be distributed ratably among all policyholders suffering loss.

(4) Losses are defined as the actual amount paid the members and do not include any adjusting expenses or other expenses. If all losses are paid in full in any year and there is an excess sum remaining in the loss reserve, such excess sum shall be retained in the loss fund and shall be available for the following purposes in this order: Payment of current losses; recoupment by the company of all sums which have been removed from the guaranty fund in prior years to pay excess losses; as a permanent loss reserve fund.

**Source:** L. 49: p. 456, § 1. CSA: C. 87, § 91(1). L. 51: p. 468, § 1. CRS 53: § 72-5-1. C.R.S. 1963: § 72-5-1. L. 92: IP(1) amended, p. 1573, § 96, effective May 20.

**10-12-102. Association to file articles - bylaws.** After the articles of association have been subscribed and acknowledged in the manner provided for Colorado corporations, a certified copy thereof shall be filed with the commissioner, who shall obtain the approval of the attorney general and otherwise investigate to determine whether the association has complied with the provisions of sections 10-12-101 to 10-12-104. The association shall adopt bylaws and prepare applications and a list of policyholders, all of which, together with any amendments thereto, shall be filed with the commissioner. The commissioner shall issue a certificate of authority to an association which in his opinion has complied with the provisions of sections 10-12-101 to 10-12-104, and, if any provision has not been complied with, the commissioner shall suspend the certificate of authority until such time as compliance has been effected.

**Source:** L. 49: p. 458, § 2. CSA: C. 87, § 91(2). CRS 53: § 72-5-2. C.R.S. 1963: § 72-5-2.

**10-12-103. Noncompliance a misdemeanor - penalty.** (1) Upon failure of any association to comply with the provisions of sections 10-12-101 to 10-12-104, whether or not in possession of a valid certificate of authority, the officers and directors jointly and severally are guilty of a misdemeanor and, upon conviction thereof, each shall be punished by a fine of not less than five hundred dollars nor more than fifteen hundred dollars for each act in violation of sections 10-12-101 to 10-12-104.

(2) Any order or decision of the commissioner shall be subject to review, which shall be on the basis of the record of the proceedings before the commissioner and shall not be limited to questions of law, by appeal to the district court of the city and county of Denver at the instance of any party in interest.

(3) Such companies, organized and operating under existing laws, shall not be required to reorganize their corporate structure in order to be eligible to operate under sections 10-12-101 to 10-12-104.

**Source:** L. 49: p. 458, § 2. CSA: C. 87, § 91(2). CRS 53: § 72-5-3. C.R.S. 1963: § 72-5-3.

**10-12-104. Fees - annual statement - tax.** (1) The association shall pay to the division of insurance the fees as prescribed pursuant to section 10-3-207 (4).

(2) (a) Each agent, solicitor, special agent, or salaried representative soliciting business in this state shall be licensed by the division of insurance upon application of the association and shall be subject to the insurance licensing laws of the state. The fee for the initial license is five dollars, and the fee for filing each annual notice of intention to keep the agent's license in force is two dollars.

(b) Notwithstanding the amount specified for any fee in paragraph (a) of this subsection (2), the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(3) The association shall render an annual statement of accounts and such records of the financial condition of the association as may be required by the commissioner, who shall furnish forms for this purpose. The commissioner shall have the same supervisory authority over such association as is provided by law in the case of other insurance companies and associations, and the commissioner shall collect two and one-fourth percent premium tax from each of the associations or companies as provided in section 10-3-209.

**Source:** L. 49: p. 459, § 3. CSA: C. 87, § 91(3). CRS 53: § 72-5-4. C.R.S. 1963: § 72-5-4. L. 65: p. 753, § 4. L. 67: p. 33, § 1. L. 91: (1) amended, p. 1233, § 7, effective June 5. L. 98: (2) amended, p. 1327, § 31, effective June 1.

**10-12-105. Guaranty fund of mutual companies.** (1) Guaranty fund certificates may be issued to provide a guaranty fund for domestic life and fire insurance companies incorporated upon the mutual plan and for domestic casualty insurance associations incorporated upon the assessment plan, such fund to be held as security for the payment of all losses and other policy liabilities of such companies. Guaranty fund certificates may draw interest or dividends not exceeding in the aggregate eight percent per annum, which shall only be paid from the profits of the company. The certificates may only be retired or redeemed by using the profits of the company for that purpose, but the full fund as required of each kind of mutual and assessment company by this title (except article 15), and article 14 of title 24, C.R.S., shall at all times be maintained. Such guaranty fund shall be a liability until redeemed or retired. It shall only be used to pay policy claims or liabilities when the contingent mutual liability of the policyholders has been drawn upon and found insufficient to meet the losses of policy claims or when the directors for any cause fail to provide for the payment of policy claims.



(2) Upon satisfying himself of such failure, the commissioner shall suspend the certificate of authority of such company and apply to the district court for an order restraining said company from doing further business; and the court may appoint a receiver or issue such decrees and orders as may best serve the interests of the members or policyholders and of the public; and the disbursement or distribution of the guaranty fund shall then be made under the court's direction; but the fund shall first be used to pay policy claims or losses, and, if any of the fund then remains, it shall be used to pay creditors, if any, and the then remaining portion of the fund shall be used to redeem outstanding guaranty fund certificates, or, if none are outstanding, it shall be distributed among the members of the company as the court may direct. The profits of a domestic mutual insurance company or association are that portion of its cash funds not required for the payment of losses and expenses and not set apart for the unearned premium reserve or any other purpose required by law.

**Source:** L. 13: p. 361, § 63. C.L. § 2536. CSA: C. 87, § 80. CRS 53: § 72-5-5. C.R.S. 1963: § 72-5-5. L. 92: (1) amended, p. 1573, § 97, effective May 20. L. 2004: (1) amended, p. 903, § 23, effective May 21. L. 2012: (1) amended, (HB 12-1266), ch. 280, p. 1508, § 38, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending subsection (1) applies to offenses committed and applications submitted on or after July 1, 2012.

**10-12-106. Fees of mutual companies.** Mutual and assessment companies, unless otherwise specified in this title (except article 15), and article 14 of title 24, C.R.S., are required to pay the same fees and be under the same supervision and authority of the commissioner as companies that are engaged in the same kind of insurance business and that are organized upon the joint-stock plan, and they shall comply with the general laws of this title, unless otherwise specified, and be subject to the penalties provided therein.

**Source:** L. 13: p. 364, § 65. C.L. § 2538. CSA: C. 87, § 82. CRS 53: § 72-5-6. C.R.S. 1963: § 72-5-6. L. 92: Entire section amended, p. 1573, § 98, effective May 20. L. 2004: Entire section amended, p. 903, § 24, effective May 21. L. 2012: Entire section amended, (HB 12-1266), ch. 280, p. 1508, § 39, effective July 1.

**Editor's note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act amending this section applies to offenses committed and applications submitted on or after July 1, 2012.

**10-12-107. Ownership of profits.** Every domestic insurance company incorporated upon the mutual or assessment plan shall state clearly in its policies or certificates that the accumulations of profits of such corporations over and above all proper liabilities are the sole property of the members or policyholders in good standing and that the same shall be distributed in a just and equitable manner in case such company is reinsured or ceases to do business.

**Source:** L. 13: p. 364, § 66. C.L. § 2539. CSA: C. 87, § 83. CRS 53: § 72-5-7. C.R.S. 1963: § 72-5-7.

**10-12-108. Mutual insurance companies - corporation policyholders.** Any public or private corporation, board, or association in this state or elsewhere may make applications and enter into agreements for and hold policies in any domestic or foreign mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such corporation, board, or association or any estate may be recognized as acting for or on its behalf for the purpose of such membership but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation

organized under the laws of this state to participate as a member of any such mutual insurance company is declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

**Source:** L. 21: p. 465, § 8. C.L. § 2564. CSA: C. 87, § 134. CRS 53: § 72-5-8. L. 55: p. 457, § 1. C.R.S. 1963: § 72-5-8.

**10-12-109. Mutual insurance companies - voting powers.** Every member of the company shall be entitled to one vote or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as may be provided in the bylaws.

**Source:** L. 21: p. 465, § 9. C.L. § 2565. CSA: C. 87, § 135. CRS 53: § 72-5-9. L. 55: p. 457, § 1. C.R.S. 1963: § 72-5-9.

**10-12-110. Mutual insurance companies - premiums and premium deposits.** The policies shall provide for a premium or premium deposit payable in cash and, except as provided in this section, for a contingent premium at least equal to the premium or premium deposit. Such mutual company may issue a policy without a contingent premium while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kinds of insurance, and in no event shall the holder of any such policy be liable for a greater amount than the premium or premium deposit expressed in the policy. If at any time the admitted assets are less than the reserve and other liabilities, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets, but no member shall be liable for any part of such contingent premium in excess of the amount demanded within one year after the termination of the policy. The commissioner may, by written order, direct that proceedings to restore such assets be deferred during the time fixed in such order.

**Source:** L. 21: p. 465, § 10. C.L. § 2566. CSA: C. 87, § 136. CRS 53: § 72-5-10. L. 55: p. 457, § 1. C.R.S. 1963: § 72-5-10.

**10-12-111. Mutual life assessment companies prohibited - when.** No life insurance company which is organized under the mutual assessment plan or which issues contracts, the performance of which is contingent upon the payment of assessments or calls made upon its members, shall do business in this state, except such companies authorized on April 15, 1913, to do business in this state and which value their assessment policies or certificates of membership as yearly renewable term policies, according to the standard of valuation of life insurance policies prescribed by the laws of this state. No such company shall provide in any contract of insurance for any cash or other benefit to accrue to any living member or policyholder or to any beneficiary except a death benefit from life insurance upon the yearly renewable term plan.

**Source:** L. 13: p. 358, § 60. C.L. § 2533. CSA: C. 87, § 77. CRS 53: § 72-5-11. L. 55: p. 458, § 1. C.R.S. 1963: § 72-5-11.

**Cross references:** For the valuation of life policies, see § 10-7-101.

**10-12-112. Validation clause.** All transactions, otherwise lawful and not inconsistent with sections 10-12-108 to 10-12-111, are hereby validated as though done pursuant to said sections.

**Source:** L. 55: p. 458, § 1. CRS 53: § 72-5-12. C.R.S. 1963: § 72-5-12.



## PART 2

## EMPLOYERS' MUTUAL LIABILITY INSURANCE

**10-12-201 to 10-12-218. (Repealed)**

**Source: L. 2010:** Entire part repealed, (HB 10-1220), ch. 197, p. 853, § 9, effective July 1.

**Editor's note:** This part 2 was numbered as article 8 of chapter 72, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 3

## MUTUAL BENEFIT ASSOCIATIONS

**10-12-301 to 10-12-333. (Repealed)**

**Source: L. 81:** Entire part repealed, p. 617, § 1, effective April 30.

**Editor's note:** This part 3 was numbered as article 9 of chapter 72, C.R.S. 1963. For amendments to this part 3 prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 4

## MUTUAL INSURANCE COMPANIES

**10-12-401. Legislative declaration.** It is the intent of the general assembly by the enactment of this part 4 that the legal existence and status of mutual insurance companies formed under this part 4 and the members thereof be recognized beyond the limits of this state and that, subject to any reasonable registration requirements, any such mutual insurance company transacting business outside this state be granted the protection of full faith and credit under section 1 of article IV of the constitution of the United States.

**Source: L. 91:** Entire part added, p. 1219, § 1, effective May 24.

**10-12-402. Scope of provisions.** This part 4 shall apply to all domestic and foreign mutual insurers, including captive insurance companies organized as mutual insurers, transacting or being organized to transact any of the kinds of business for which insurance companies regulated by this title are permitted.

**Source: L. 91:** Entire part added, p. 1219, § 1, effective May 24.

**10-12-403. Mutual insurer defined.** For purposes of this part 4, a "mutual" insurer is an insurance corporation without capital stock, owned by its policyholders collectively, who have the right to vote in the election of its directors.

**Source: L. 91:** Entire part added, p. 1219, § 1, effective May 24.

**10-12-404. Company name.** The corporate name of any company organized under this article shall contain the word "mutual" and shall not be the same as and shall be

distinguishable on the records of the secretary of state from the name of any domestic company or of any foreign or alien company authorized to transact business in this state.

**Source: L. 91:** Entire part added, p. 1220, § 1, effective May 24. **L. 2000:** Entire section amended, p. 988, § 102, effective July 1.

**10-12-405. Applicability of other code and corporation code provisions.** Domestic mutual insurers, incorporating or qualifying to transact any or all of the classes of insurance designated in section 10-3-102, shall be subject to all provisions of this title generally applicable to other incorporated insurers, specifically including the provisions of article 3 of this title, and in case of conflict between this part 4 and other provisions of this title, the provisions of this part 4 shall control. Domestic mutual insurers shall be subject to additional articles of this title as they are applicable to the class or classes of insurance made by such domestic mutual insurer. Domestic mutual insurers shall not be required to have or issue capital stock or shares nor shall they be required to distribute an annual report to a member other than at the time of the initial policy issuance or once each year on renewal. Except as otherwise provided in this part 4, incorporated mutual insurers shall be deemed to be incorporated or organized under the general corporation law of this state.

**Source: L. 91:** Entire part added, p. 1220, § 1, effective May 24.

**10-12-406. Lines of business.** When permitted by its articles of incorporation, a company may be organized under this part 4 to make insurance to the same extent and for the same purposes as permitted for domestic insurance companies under section 10-3-102 or for captive insurance companies under section 10-6-107.

**Source: L. 91:** Entire part added, p. 1220, § 1, effective May 24. **L. 94:** Entire section amended, p. 1648, § 88, effective May 31.

**10-12-407. Bylaws.** The bylaws shall provide that each policyholder of the company shall be a member of the company and shall be entitled to one or more votes based upon the amount of insurance in force, the number of policies held, or the amount of premium paid, as shall be stated in such bylaws. The bylaws may permit voting by proxy.

**Source: L. 91:** Entire part added, p. 1220, § 1, effective May 24.

**10-12-408. Liability of members.** (1) A member of a mutual insurance company organized under this article is not liable to any other member, to the company, or to any creditor of the company for the payment of losses or expenses of the company beyond payment of premiums for insurance issued to such member, nor may any member be assessed for any liability of the company.

(2) A mutual insurance company may, if permitted by its articles of incorporation or bylaws and if provision therefor is clearly disclosed to its members on the face of the policy, make contingent premium assessments on its members.

(3) No person is liable for any obligation arising from membership unless the person was admitted to membership upon the person's application or with the person's consent.

**Source: L. 91:** Entire part added, p. 1220, § 1, effective May 24.

**10-12-409. Dividends.** (1) The board of directors or trustees of any company which is subject to the provisions of this part 4 and which writes life, accident, or accident and health insurance may declare dividends to its members.

(2) After retaining sufficient funds for the payment by the company of all outstanding policy and other obligations, the board of directors or trustees of any company which is subject to the provisions of this article and which writes casualty, fidelity and surety, fire,



elements and marine, or similar insurance may from time to time fix and determine the amount of dividends payable, or of unabsorbed or unused premiums or premium deposits to be returned, to each policyholder, may establish reasonable classifications or groupings of policyholders and plans for the distribution of such dividends or refunds upon each general kind of insurance or groups or classes thereof, and may establish reasonable territorial divisions upon policies expiring during a fixed period.

(3) The declaration and payment of dividends by any company subject to the provisions of this part 4 shall be subject to the following conditions:

(a) No dividends shall be declared or paid at any time except out of the earned, as distinguished from contributed, surplus nor when the surplus of the company is less than the original surplus required for the kind or kinds of insurance the company is authorized to write nor when the payment of such dividends will reduce its surplus to less than such amount.

(b) No dividends shall be declared or paid contrary to any restriction contained in the articles of incorporation.

**Source: L. 91:** Entire part added, p. 1221, § 1, effective May 24.

**10-12-410. Insolvency or impairment of mutual insurance company.** A mutual insurance company is deemed insolvent when its admitted assets are less than all of its liabilities, excluding from such liabilities the aggregate amount of its guaranty fund, and is deemed impaired when its admitted assets are less than its liabilities, including as a liability the aggregate amount of its guaranty fund, or when its surplus is less than the minimum requirements of section 10-3-201.

**Source: L. 91:** Entire part added, p. 1221, § 1, effective May 24.

**10-12-411. Conversion of domestic mutual insurer to domestic stock or other form of insurer.** (1) Any domestic mutual insurer may submit to the commissioner a petition and plan to convert, without reincorporation, into a domestic stock or other form of insurer pursuant to the requirements of this section.

(2) The petition and plan shall set forth with specificity the terms and conditions of the proposed conversion and shall do all of the following:

(a) Certify that the plan has been adopted by a majority vote of the board of directors of the insurer;

(b) Certify that the plan and the proposed conversion will not be prejudicial to the policyholders of the insurer;

(c) Specify the method and basis for the issuance of the capital stock of the converted stock or other form of insurer; and

(d) Provide copies of proposed amendments to the insurer's articles of incorporation and bylaws or other documents of organization to effectuate the conversion.

(3) The commissioner shall preliminarily approve the conversion after receiving the information provided in subsection (2) of this section.

(4) After receiving preliminary approval from the commissioner, the insurer shall do all of the following:

(a) Give notice, either personally or through mailing at least twenty-one days before the time fixed for the meeting, to the last known postal address of each policyholder that the question of the conversion will be voted upon at a regular or special meeting of the policyholders. Such notice shall fairly but briefly describe the proposed conversion plan.

(b) Approve the conversion plan and any necessary amendments to the insurer's articles of incorporation and bylaws or other documents of organization, at the regular or a special meeting held in pursuance of the call and notice, by the affirmative vote of not less than two-thirds of the policyholders voting in person or by proxy; and

(c) Submit the conversion plan, together with proper proof that it has been approved by the policyholders as provided in this section, to the commissioner for final approval. The

conversion plan shall not become effective until the commissioner issues an amended certificate of authority to the petitioner.

(5) Upon the issuance of the amended certificate of authority, the conversion shall be effective and the mutual insurer shall immediately become a stock or other form of insurer rather than a mutual insurer. The conversion into a stock or other form of insurer shall not affect any suits, rights, or contracts of the mutual insurer. In all other respects the rights and properties of the mutual insurer shall continue to be the property of the resulting stock or other form of insurer, which shall remain bound by all the obligations and liabilities of the mutual insurer. The stock or other form of insurer shall be deemed to have been organized at the time the converted mutual insurer was originally organized.

(6) Notwithstanding the requirements of paragraphs (a) and (b) of subsection (4) of this section, in the event of insolvency of the insurer, its board of directors by a majority vote may, in its petition, request that the commissioner waive the requirements of notice to and approval by the policyholders before submitting the petition and plan of conversion. Such petition shall specify both of the following:

(a) The method and basis for the issuance of the converted insurer's shares of its capital stock or other indication of ownership to an independent party in connection with an investment by such independent party in an amount sufficient to restore the insurer to a sound financial condition; and

(b) That the conversion shall be accomplished without distribution to the past, present, or future policyholders, if the commissioner finds that the value of the insurer, due to insolvency, is insufficient to warrant any such distribution.

(7) If the commissioner, upon review of the plan of conversion and the financial examination, finds that the domestic mutual insurer meets statutory requirements with respect to capital, surplus fund, and assets, the commissioner may, by a written order, waive the requirements of paragraphs (a) and (b) of subsection (4) of this section.

(8) A domestic mutual insurer may, by a majority vote of its directors and upon approval of the commissioner, abandon such plan for conversion at any time before the issuance of the final order of the commissioner. Upon such abandonment, all rights and obligations arising out of the plan shall terminate and the insurer shall continue to conduct its business as a domestic mutual insurer as though no such plan had ever been adopted.

Source: L. 91: Entire part added, p. 1222, § 1, effective May 24.

INTERINSURANCE

ARTICLE 13

Interinsurance

10-13-101.	Interinsurance contracts.		rations.
10-13-102.	Licensing of solicitors.	10-13-109.5.	Exchange may hold and convey real estate.
10-13-103.	Declaration of subscribers.		
10-13-104.	Venue of actions - service of process.	10-13-110.	Noncompliance a misdemeanor.
10-13-105.	Maximum indemnity on single risk.	10-13-111.	Annual certification - revocation.
10-13-106.	Certificate of authority issued.	10-13-112.	Annual filing fee - tax. (Repealed)
10-13-107.	Reserve required.		
10-13-108.	Annual financial report.	10-13-113.	Additional penalties.
10-13-109.	Authority conferred on corpo-	10-13-114.	Laws applicable.

**10-13-101. Interinsurance contracts.** Individuals, partnerships, and corporations of this state, referred to in this article as "subscribers", are authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the law, excepting life insurance, if such subscribers, through their attorneys, attorneys-in-fact, agents, or other representa-



tives, deposit and maintain on deposit with the commissioner moneys or securities of the value of fifty thousand dollars as security for the performance of all such contracts issued in this state or in any other state or country by such subscribers and as security for any act or omission by an attorney-in-fact required to be bonded for or secured against under any attorney-in-fact bond required by the laws of any state in which the reciprocal or interinsurance exchange does business. Such securities shall be such as are required for lawful investments of capital and reserve of domestic insurance companies by the provisions of sections 10-3-215 to 10-3-230. In lieu of such deposit or part thereof, the commissioner may accept a certificate of the public official having supervision over insurers in any other state to the effect that a like deposit by such insurer or a like part thereof in an equal or a greater amount is held in public custody in such state. The offices through which such indemnity is exchanged shall be classified as reciprocal or interinsurance exchanges.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. L. 47: p. 589, § 1. CRS 53: § 72-4-1. C.R.S. 1963: § 72-4-1. L. 73: p. 845, § 1.

#### ANNOTATION

**Applied** in *Benham v. Pryke*, 636 P.2d 1339 (Colo. App. 1981).

**10-13-102. Licensing of solicitors.** Such contracts may be executed by an attorney, attorney-in-fact, agent, or other representative, referred to in this article as an “attorney”, duly authorized and acting for such subscribers. Each attorney or exchange doing business in this state shall be required to license each solicitor, agent, special agent, special representative, or salaried representative soliciting business in this state. Such representative need not be a resident of this state, nor will such representative be required to countersign policies issued. The application for such license shall be made by the employer, and the commissioner shall issue to such individual requested in the application the required license upon payment of the usual agent’s license fee if the individual is found by the commissioner to be qualified therefor.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. L. 47: p. 590, § 2. CRS 53: § 72-4-2. C.R.S. 1963: § 72-4-2.

**Cross references:** For fees for licensing agents, see § 10-3-207.

**10-13-103. Declaration of subscribers.** (1) Such subscribers so contracting among themselves shall through their attorney file with the commissioner of this state a declaration verified by the oath of such attorney setting forth:

(a) The name or title of the office at which such subscribers propose to exchange such indemnity contracts. Such name or title shall not be so similar to any other name or title previously adopted by a similar organization or by any insurance corporation or association as in the opinion of the commissioner is calculated to result in confusion or deception.

(b) The kind of insurance to be effected or exchanged;

(c) A copy of the form of policy contract or agreement under or by which such insurance is to be effected or exchanged;

(d) A copy of the form of power of attorney or other authority of such attorney under which such insurance is to be effected or exchanged, which shall show the allowance for expense;

(e) The location of the office from which such contracts or agreements are to be issued;

(f) That applications have been made for indemnity upon at least one hundred separate risks aggregating not less than one and one-half million dollars, as represented by executed contracts or bona fide applications to become concurrently effective, or, in case of liability or compensation insurance, covering a total payroll of not less than one and one-half million dollars;

- (g) A financial statement in such form as the commissioner may require;
- (h) Such other information as the commissioner may deem necessary for the protection of the public.

**Source:** L. 13: p. 373, § 81. L. 15: p. 273, § 1. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-3. C.R.S. 1963: § 72-4-3.

**10-13-104. Venue of actions - service of process.** Concurrently with the filing of the declaration provided for by the terms of section 10-13-103, the attorney shall file with the commissioner an instrument in writing executed by him for said subscribers, conditioned that, upon the issuance of the certificate of authority provided for in section 10-13-111, action may be brought in the county in which the property insured thereunder is situated, and service of process may be had upon the commissioner or deputy commissioner in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served, and the commissioner shall file one copy, forward one copy to said attorney, and return one copy with his admission of service.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-4. C.R.S. 1963: § 72-4-4. L. 73: p. 847, § 2. L. 86: Entire section amended, p. 556, § 8, effective July 1. L. 89: Entire section amended, p. 438, § 10, effective July 1. L. 92: Entire section amended, p. 1574, § 99, effective July 1.

**10-13-105. Maximum indemnity on single risk.** There shall be filed with the commissioner by such attorney a statement under oath showing the maximum amount of indemnity upon any single risk, and such attorney, as often as the same is required, shall file with the commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten percent of the net worth of such subscriber.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-5. C.R.S. 1963: § 72-4-5.

**10-13-106. Certificate of authority issued.** (1) Upon the filing of the required papers, it is the duty of the commissioner to examine and pass upon the same and, if found in accordance with this title, to issue a certificate of authority which shall expire on April 1 next succeeding.

(2) To qualify for authority to transact insurance business in this state after July 1, 1971, every interinsurance exchange or reciprocal exchange shall possess and maintain an unencumbered surplus in an amount of not less than three hundred thousand dollars. Any interinsurance exchange or reciprocal exchange currently authorized to transact insurance business in this state need not meet such surplus requirements until five years after July 1, 1971; except that the surplus of any such interinsurance exchange or reciprocal exchange shall be increased annually at the rate of twenty percent of the difference between its surplus as of December 31, 1970, and three hundred thousand dollars. Upon written request and for good reason shown, the commissioner may waive the requirement for any one annual surplus increase, with the provision that said surplus increase will be accomplished in full within the next year, together with the surplus increase scheduled for that year.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-6. C.R.S. 1963: § 72-4-6. L. 71: p. 719, § 1. L. 2001: (1) amended, p. 1267, § 6, effective June 5.



## ANNOTATION

**Under this section the competency of insurers is passed upon, and determined,** by the insurance commissioner. Consolidated Underwriters v. Indus. Comm'n, 117 Colo. 239, 185 P.2d 1013 (1947).

**Insurance commissioner has discretion** under subsection (1) to issue a new annual certificate of authority to an interinsurance exchange

which fails to meet the unencumbered surplus requirement for original certification when he is acting under his regulatory authority to rehabilitate the interinsurance exchange in the same manner as any other insurance company in §§ 10-3-401 to 10-3-414. Alias Smith & Jones v. Barnes, 695 P.2d 302 (Colo. App. 1984).

**10-13-107. Reserve required.** There shall be maintained at all times an unearned premium reserve computed on a monthly or more frequent pro rata basis. The computation of this reserve shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of an attorney.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-7. C.R.S. 1963: § 72-4-7. L. 71: p. 720, § 2. L. 75: Entire section R&RE, p. 369, § 1, effective July 1.

**10-13-108. Annual financial report.** (1) Such attorney shall make a sworn annual report to the commissioner of the business of the preceding year ending December thirty-first, on or before the first day of March succeeding, showing that the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses and subject to taxation: Such attorney shall not be required to furnish the names and addresses of any subscribers, except for purposes of verifying by the commissioner the reports furnished under section 10-13-105. These names and addresses are not to be filed or to become any part of the public records. The report shall be on a form prescribed by the commissioner.

(2) The business affairs and assets of any reciprocal or interinsurance exchange or attorney's office shall be subject to examination by the commissioner.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-8. C.R.S. 1963: § 72-4-8. L. 64: p. 144, § 74.

**10-13-109. Authority conferred on corporations.** Any corporation organized under the laws of this state, in addition to the rights, powers, and franchises specified in its articles of incorporation, has full power to exchange insurance contracts of the kind and character mentioned in section 10-13-101. The right to exchange such contracts is declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-9. C.R.S. 1963: § 72-4-9.

**Editor's note:** The word "corporation" as used in this section is limited to those engaged in the business of insurance or suretyship. See definition in § 10-1-102 (6).

**10-13-109.5. Exchange may hold and convey real estate.** (1) Any reciprocal or interinsurance exchange authorized to transact business in this state may, in its own name, purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real property, or have an interest in real property, wherever situated, and may sell, convey, assign, encumber, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of such real property or interest.

(2) (a) To encumber, transfer, or otherwise affect an estate or interest in real property in its own name, a reciprocal or interinsurance exchange shall execute and record, in the office of the clerk and recorder in the county in which such real property is located, a statement of authority that sets forth:

- (I) The name of the reciprocal or interinsurance exchange;
- (II) The address, including the street address, if any, of the reciprocal or interinsurance exchange; and
- (III) The name of the person or entity authorized to encumber, transfer, or otherwise affect an estate or interest in real property in the name of the reciprocal or interinsurance exchange.

(b) The statement of authority shall be executed and acknowledged by the secretary or assistant secretary of the reciprocal or interinsurance exchange who is not the person authorized to encumber, transfer, or otherwise affect an estate or interest in real property in the name of the reciprocal or interinsurance exchange.

(c) An official with whom a statement of authority is recorded may charge and collect a fee for such recordation not to exceed the fee for recordation of an encumbrance or transfer of real property.

(d) After recording, a statement of authority, as it may be amended from time to time, shall remain effective until a cancellation thereof is recorded. An amendment or cancellation of a statement of authority shall meet the requirements for execution and recording of an original statement.

(e) The recorded statement of authority, any amendment thereof, and any cancellation thereof shall constitute prima facie evidence of the facts recited therein, the authority of the person executing such statement, amendment, or cancellation to execute and record such statement, amendment, or cancellation, and the authority of the person or entity named therein to encumber, transfer, or otherwise affect an estate or interest in real property in the name of the reciprocal or interinsurance exchange.

(3) Any contract, deed, lease, mortgage, deed of trust, purchase or sale agreement, or any other contract, document, or instrument to be executed in the name of the reciprocal or interinsurance exchange may be executed by the person or entity designated in the recorded statement of authority of the reciprocal or interinsurance exchange.

(4) Notwithstanding the provisions of section 38-30-123, C.R.S., the power of attorney or other authorizing document actually executed by subscribers to the reciprocal or interinsurance exchange shall not be filed or recorded in or become part of the public records.

(5) The validity of transactions described in subsection (1) of this section entered into prior to July 1, 1996, and the rights, duties, and interests contained therein shall remain unimpaired and may be completed, confirmed, or enforced in accordance with the law or custom in effect prior to July 1, 1996, or pursuant to the terms of this section.

**Source:** L. 96: Entire section added, p. 145, § effective April 8.

**10-13-110. Noncompliance a misdemeanor.** Any attorney, agent, or representative who, except for the purpose of applying for a certificate of authority, exchanges any contracts of indemnity of the kind and character specified in section 10-13-101 or directly or indirectly solicits or negotiates any application for the same without first complying with the provisions of this title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-10. C.R.S. 1963: § 72-4-10.



**10-13-111. Annual certification - revocation.** Each attorney by or through whom are issued any policies of or contracts for indemnity of the character referred to in this title shall procure from the commissioner annually a certificate of authority stating that all the requirements of this title have been complied with, and, upon such compliance and the payment of the fees and taxes required by this title, the commissioner shall issue such certificate of authority. The commissioner may revoke or suspend any certificate of authority issued in case of breach of any of the conditions imposed by this title after reasonable notice has been given said attorney in writing so that he may appear and show cause why such action should not be taken. Pending such investigation, no information shall be published, but, in case of revocation or suspension of a certificate of authority, notice of the same shall be published by the commissioner in the Denver daily newspapers. Any final action of the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-11. C.R.S. 1963: § 72-4-11. L. 92: Entire section amended, p. 1574, § 100, effective May 20.

#### **10-13-112. Annual filing fee - tax. (Repealed)**

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. L. 51: p. 473, § 1. CRS 53: § 72-4-12. C.R.S. 1963: § 72-4-12. L. 71: p. 720, § 3. L. 73: p. 845, § 2. L. 86: Entire section amended, p. 556, § 9, effective July 1. L. 89: Entire section amended, p. 438, § 11, effective July 1. L. 91: Entire section amended, p. 1233, § 8, effective June 5. L. 2000: Entire section repealed, p. 1617, § 3, effective August 2.

**10-13-113. Additional penalties.** In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any provisions or terms of this title, upon the part of the attorney, shall be the refusal, suspension, or revocation of the certificate of authority by the commissioner, and publication of his act, after due notice and opportunity for hearing as provided for in section 10-13-111.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-13. C.R.S. 1963: § 72-4-13.

**10-13-114. Laws applicable.** Except as they may be inconsistent with the provisions of this article, all other provisions of this title shall apply to interinsurance and reciprocal exchanges.

**Source:** L. 13: p. 373, § 81. C.L. § 2554. CSA: C. 87, § 98. CRS 53: § 72-4-14. C.R.S. 1963: § 72-4-14. L. 71: p. 720, § 4. L. 73: p. 846, § 3.

## **FRATERNAL BENEFIT SOCIETIES**

### **ARTICLE 14**

#### **Fraternal Benefit Societies**

**Editor's note:** This article was numbered as article 7 of chapter 72, C.R.S. 1963. The substantive provisions of this article were amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

10-14-405.

Nonforfeiture benefits, cash  
surrender values, certificate  
loans, and other options.

DEFINITIONS - STRUCTURE AND  
PURPOSE

PART 5

FINANCIAL

- 10-14-101. Definitions.
- 10-14-102. Fraternal benefit societies -  
what constitutes.
- 10-14-103. Lodge system - defined.
- 10-14-104. Representative form of govern-  
ment - defined.
- 10-14-105. Purposes and powers.

10-14-501.  
10-14-502.  
10-14-503.  
10-14-504.  
10-14-505.

Investments.  
Funds.  
Exemptions.  
Taxation.  
Rules and regulations of com-  
missioner.

PART 2

PART 6

MEMBERSHIP

REGULATION

- 10-14-201. Qualifications for membership.
- 10-14-202. Principal office - meetings -  
communications to members  
- grievance procedures.
- 10-14-203. No personal liability.
- 10-14-204. Waiver.

10-14-601.  
10-14-602.  
10-14-603.  
10-14-604.  
10-14-605.  
10-14-606.  
10-14-607.

Valuation.  
Reports.  
Annual certificate of authority.  
Cash capital.  
Examination of societies.  
Publications.  
Grounds for injunction, liqui-  
dation, and receivership of  
domestic society.  
Foreign or alien society - ad-  
mission.  
Suspension - revocation - de-  
nial of license of foreign or  
alien society.  
Injunction.  
Licensing of agents.  
Unfair methods of competition  
and unfair and deceptive acts  
and practices.

PART 3

GOVERNANCE

- 10-14-301. Organization.
- 10-14-302. Amendments to governing  
documents.
- 10-14-303. Institutions.
- 10-14-304. Reinsurance.
- 10-14-305. Consolidations and mergers.
- 10-14-306. Conversion of fraternal benefit  
society into a mutual or stock  
life insurance company.

10-14-608.  
10-14-609.  
  
10-14-610.  
10-14-611.  
10-14-612.

PART 4

PART 7

CONTRACTUAL BENEFITS

MISCELLANEOUS

- 10-14-401. Benefits.
- 10-14-402. Beneficiaries.
- 10-14-403. Benefits not attachable.
- 10-14-404. Benefit contract.

10-14-701.  
10-14-702.  
10-14-703.  
10-14-704.  
10-14-705.

Service of process.  
Fees.  
Review.  
Penalties.  
Exemption of certain societies.

PART 1

DEFINITIONS - STRUCTURE AND PURPOSE

- 10-14-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) "Benefit contract" means the agreement for the provision of benefits authorized by section 10-14-401, as that agreement is described in section 10-14-404.
  - (2) "Benefit member" means an adult member who is designated by the governing documents of the society to be a benefit member under a benefit contract.
  - (3) "Certificate" means the document issued as written evidence of the benefit contract.
  - (4) "Governing documents" mean the society's articles of incorporation, constitution, bylaws, and rules, however designated.
  - (5) "Lodge" means any subordinate member unit of the society, known as camps, courts, councils, branches, or by any other designation as described in section 10-14-103.



(6) "Premium" means any premium, rate, dues, or other required contributions by whatever name known, which are payable under the certificate.

(7) "Rule" means any rule, regulation, or resolution adopted by the supreme governing body or board of directors which is intended to have general application to the members of the society.

(8) "Society" means a fraternal benefit society as set forth in section 10-14-102, unless otherwise indicated.

**Source: L. 93:** Entire article amended with relocations, p. 585, § 1, effective July 1.

**Editor's note:** The former § 10-14-101 was relocated to § 10-14-102 in 1993.

**10-14-102. Fraternal benefit societies - what constitutes.** Any incorporated society, order, or supreme lodge, without capital stock, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides any of the benefits enumerated in section 10-14-401, is hereby declared to be a fraternal benefit society.

**Source: L. 93:** Entire article amended with relocations, p. 586, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-101 as it existed prior to 1993, and the former § 10-14-102 was relocated to § 10-14-103.

#### ANNOTATION

**Annötator's note.** Since § 10-14-102 is similar to § 10-14-101 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

**For a nonprofit corporation lacking indicia of fraternal society,** see Int'l. Serv. Union Co. v. People ex rel. Wettengel, 101 Colo. 1, 70 P.2d 431 (1937).

**Lack of lodge system and representative government subject corporation to premium tax.** The general assembly imposes a tax upon gross premium income of insurance companies.

Fraternal and benevolent corporations defined as those which have a lodge system with a ritualistic form of work and representative form of government are exempted. It has clearly defined what is meant by "lodge system" and "representative government". Since the reorganization, Homesteaders has not had a lodge system; it has not had a representative form of government; nor has it performed any ritualistic work. These are requirements essential to a status that would exempt it from the tax under discussion. *Beery v. Homesteaders Life Co.*, 146 Colo. 218, 361 P.2d 127 (1961).

**10-14-103. Lodge system - defined.** (1) A society is operating on the lodge system if it has a supreme governing or legislative body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its governing documents, and rituals. Subordinate lodges shall be required by the governing documents of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(2) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice or vote in the management of the society.

**Source: L. 93:** Entire article amended with relocations, p. 586, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-102 as it existed prior to 1993, and the former § 10-14-103 was relocated to § 10-14-104.

## ANNOTATION

**Annotator's note.** Since § 10-14-103 is similar to § 10-14-102 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotation to this section.

**Society's constitution is part of insurance contract.** Under the laws of Colorado governing fraternal and benefit societies, the constitution of such a society is made a part of the contract between the society and the insured. *Neighbors v. Westover*, 99 Colo. 231, 61 P.2d 585 (1936).

**10-14-104. Representative form of government - defined.** (1) A society has a representative form of government when:

(a) The supreme governing body is either:

(I) An assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's governing documents. A society may provide for the election of delegates by mail. The elected delegates shall constitute at least a majority of the delegates and not less than two-thirds of the votes of the assembly and not less than the number of votes required to amend the society's governing documents. The assembly shall be elected, shall meet at least once every four years, and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's governing documents.

(II) A board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's governing documents. A society may provide for election of the board by mail. Each term of a board member shall not exceed four years. Vacancies on the board between elections shall be filled in the manner prescribed by the society's governing documents. Those persons elected to the board shall constitute at least a majority of the board and not less than the number of votes required to amend the society's governing documents. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least semiannually to conduct the business of the society.

(b) The officers of the society are elected either by the supreme governing body or by the board of directors, pursuant to the governing documents of the society;

(c) Only benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly; and

(d) Each voting member has one vote. No vote may be cast by proxy.

**Source: L. 93:** Entire article amended with relocations, p. 586, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-103 as it existed prior to 1993, and the former § 10-14-104 was relocated to § 10-14-503.

**10-14-105. Purposes and powers.** (1) A society shall operate for the benefit of members and their beneficiaries by:

(a) Providing benefits as specified in section 10-14-401; and

(b) Operating for one or more lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others. Such purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(2) Every society shall have the power to adopt governing documents for the government of the society, the admission of its members, and the management of its affairs. Each society shall have the power to change, alter, add to, or amend such governing documents and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

**Source: L. 93:** Entire article amended with relocations, p. 588, § 1, effective July 1.



**Editor's note:** This section is similar to former § 10-14-113 (1)(b) and (6) as they existed prior to 1993, and the former § 10-14-105 was relocated to § 10-14-401.

## PART 2

### MEMBERSHIP

**10-14-201. Qualifications for membership.** (1) A society shall specify in its governing documents or rules:

(a) Eligibility standards for each and every class of membership. If benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than fifteen years of age and not greater than twenty-one years of age.

(b) The process for admission to membership for each membership class; and

(c) The rights and privileges of each membership class. Only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(2) A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

**Source: L. 93:** Entire article amended with relocations, p. 588, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-108 as it existed prior to 1993.

### ANNOTATION

**Annotator's note.** Since § 10-14-201 is similar to § 10-14-108 as it existed prior to the 1993 amendment to article 14, which resulted in the relocation of provisions, a relevant case decided under that provision has been included in the annotations to this section.

**Person who misrepresents age is not aided by retroactive lowering of age limit.** Retroac-

tive amendment to the charter of a fraternal benefit society as to the age limit of members held not to apply to one who procured his alleged membership by misrepresenting his age. *Wiltshire v. Modern Woodmen of Am.*, 76 Colo. 460, 232 P. 925 (1925).

**10-14-202. Principal office - meetings - communications to members - grievance procedures.** (1) The principal office of any domestic society shall be located in this state and comply with the provisions of section 10-3-128. The meetings of its supreme governing body may be held in any state, district, province, or territory wherein such society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

(2) (a) A society may provide in its governing documents for an official publication in which any notice, report, or statement required by statute to be given to members, including notice of election, may be published. Such required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1 of each year, a synopsis of the society's annual statement, as of the immediately preceding December 31, providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, such synopsis may be published in the society's official publication.

(c) A society may provide for procedures in its governing documents for grievances or complaints by members.

**Source: L. 93:** Entire article amended with relocations, p. 589, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-119 as it existed prior to 1993.

**10-14-203. No personal liability.** (1) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(2) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that such person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which such person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding as to which such person is finally adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society or in relation to any matter in such action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement, unless in either case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that such conduct was unlawful. The determination whether the conduct of such person met the standard required to justify indemnification and reimbursement in relation to any matter described in this subsection (2) may only be made by the supreme governing body or board of directors by a majority vote or a quorum consisting of persons who were not parties to such action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required to justify indemnification and reimbursement. The right of indemnification and reimbursement pursuant to this subsection (2) shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of such person's heirs, executors, and administrators.

(3) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

(4) No director, officer, employee, member, or volunteer of a society serving without compensation shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such person for the society unless such act or omission involved willful or wanton misconduct.

**Source: L. 93:** Entire article amended with relocations, p. 589, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-120 as it existed prior to 1993.

**10-14-204. Waiver.** The governing documents of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the governing documents of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

**Source: L. 93:** Entire article amended with relocations, p. 590, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-121 as it existed prior to 1993.



## ANNOTATION

**Annotator's note.** Since § 10-14-204 is similar to § 10-14-121 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

**Waiver of nonpayment of premiums or dues.** Where it is established that an insurance society accepted payment of premiums after the

insured was in default, and that it was aware of such default, a waiver is established, and the case does not fall within this section, concerning waivers of the provisions of the laws and constitution of such societies. *Lagrow v. Head Camp, Pac. Jurisdiction, Woodmen of World*, 75 Colo. 466, 226 P. 1086 (1924); *Fraternal Aid Union v. Murray*, 81 Colo. 236, 254 P. 997 (1927).

## PART 3

## GOVERNANCE

**10-14-301. Organization.** (1) A domestic society organized on or after July 1, 1993, shall be formed as follows: Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society may make, sign, and acknowledge before some officer competent to take acknowledgments of deeds, articles of incorporation. Such articles of incorporation shall contain:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) The purpose for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this article.

(c) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issue of the letter of authorization.

(2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require such further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in such amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as is required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this article and all provisions of the statutes have been complied with, the commissioner shall furnish the incorporators a letter of authorization authorizing the society to solicit members as provided in this section.

(3) No letter of authorization granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon good cause shown, unless the five hundred applicants required in subsection (4) of this section have been secured and the organization has been completed as provided in this section. The articles of incorporation and all other proceedings pursuant thereto shall become null and void one year from the date of the letter of authorization, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as provided in this section.

(4) Upon receipt of a letter of authorization from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its tables of rates, and shall issue to each such applicant a receipt for the amount so collected.

No society shall incur any liability other than for such advance premium, nor issue any certificate, nor pay, allow, offer, or promise to pay any benefit to any person until:

(a) At least ten subordinate lodges have been established into which the five hundred applicants have been admitted;

(b) There has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of such society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, and the amount of benefits to be granted and premiums therefor; and

(c) It is shown to the commissioner, by sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly premium as provided, which premiums in the aggregate shall amount to at least one hundred fifty thousand dollars. The advance premiums shall be held in trust during the period of organization, and, if the society has not qualified for a certificate of authority within one year, as specified in this section, the premiums shall be returned to said applicants.

(5) The commissioner may make such examination and require such further information as the commissioner deems advisable. The society shall submit articles of incorporation, which shall be issued in triplicate, to the commissioner and attorney general for examination. After being approved, the articles shall be filed and recorded in the office of the secretary of state who shall issue a certificate of incorporation. A copy of the articles, certified by the secretary of state, shall be filed with the commissioner. Upon presentation of satisfactory evidence that the society has complied with all the statutory provisions, including the establishment of a deposit with the commissioner of three hundred thousand dollars, unless the commissioner accepts a lesser amount, the commissioner shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this article. The commissioner shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.

**Source:** L. 93: Entire article amended with relocations, p. 591, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-113 (1) to (5) as they existed prior to 1993.

**Cross references:** For persons before whom acknowledgments of deeds may be taken, see § 38-30-126.

**10-14-302. Amendments to governing documents.** (1) A domestic society may amend its governing documents in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its governing documents so provide, by referendum. Such referendum may be held in accordance with the provisions of its governing documents by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months after the date of submission thereof, a majority of the members voting shall have signified their consent to such amendment by one of the methods specified in this section. Whenever a domestic society desires to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, finds the same to be legally adopted and in due legal form and not in conflict with statutory provisions governing societies, then and not otherwise the certificate of amendment shall be filed with the secretary of state. Any other amendment of the governing documents of the society shall be filed with the commissioner. If the commissioner, with the advice of the attorney general, finds the amendment to be legally adopted and in due legal form and not in conflict with statutory provisions governing societies, then the amendment shall become operative upon filing, unless a later time is provided in the amendment or in the society's governing documents.



(2) Within ninety days after any amendment becomes operative, the amendment or amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that the same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof have been furnished to the addressee.

(3) Every foreign or alien society authorized to do business in this state shall file with the commissioner and the secretary of state a duly certified copy of all amendments of, or additions to, its articles of incorporation within ninety days after the enactment of the same in accordance with the provisions set forth in subsection (1) of this section. Any other amendment of the governing documents of the society shall be filed with the commissioner within ninety days after enactment.

(4) Printed copies of the governing documents, as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

**Source: L. 93:** Entire article amended with relocations, p. 594, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-123 as it existed prior to 1993.

**10-14-303. Institutions.** A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by section 10-14-105 (1) (b). Such institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for this purpose shall be reported in every annual statement.

**Source: L. 93:** Entire article amended with relocations, p. 595, § 1, effective July 1.

**10-14-304. Reinsurance.** (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this state. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after July 1, 1993, unless the reinsurance is in compliance with the applicable provisions of section 10-3-118 and all pertinent insurance regulations.

(2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 10-14-305.

**Source: L. 93:** Entire article amended with relocations, p. 595, § 1, effective July 1.

**10-14-305. Consolidations and mergers.** (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than the society's most recent financial report required pursuant to section 10-14-602;

(c) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's governing documents so permit, by mail;

(d) Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society; and

(e) Any other information deemed necessary by the commissioner.

(2) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each, the commissioner shall approve the contract and issue a certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the statutes of such state or territory and a certificate of such approval filed with the commissioner of this state or, if the statutes of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner or equivalent regulatory agency of such state or territory and a certificate of such approval filed with the commissioner of this state. In case such contract is not approved, it shall be inoperative, and the fact of its submission and its contents shall not be disclosed by the commissioner.

(3) Upon the consolidation or merger becoming effective as provided in this section, all the rights, franchises, interests, duties, and liabilities of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein vested under the laws of this state in any of the societies consolidated or merged shall not revert or be in any way impaired by reason of the consolidation or merger but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

(4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document stating that such notice or document has been duly addressed and mailed shall be prima facie evidence that such notice or document has been furnished the addressees.

**Source: L. 93:** Entire article amended with relocations, p. 595, § 1, effective July 1.  
**L. 94:** (1)(b) amended, p. 1629, § 25, effective May 31.

**Editor's note:** This section is similar to former § 10-14-115 (1) as it existed prior to 1993.

**10-14-306. Conversion of fraternal benefit society into a mutual or stock life insurance company.** Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company or stock life insurance company by compliance with all the requirements of this title pertaining to a life insurance company. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan. No such conversion shall take effect unless and until approved by the commissioner, who may give such approval if the commissioner finds that the proposed change is in conformity with the statutory requirements and not prejudicial to the certificate holders of the society.

**Source: L. 93:** Entire article amended with relocations, p. 597, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-115 (2) as it existed prior to 1993.

## PART 4

### CONTRACTUAL BENEFITS

**10-14-401. Benefits.** (1) A society may provide the following contractual benefits as authorized by the certificate of authority issued:



- (a) Death benefits;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits;
- (e) Hospital, medical, or nursing benefits;
- (f) Monument or tombstone benefits to the memory of deceased members; and
- (g) Such other benefits as authorized for life insurers and which are not inconsistent with this article.

(2) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (1) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

**Source:** L. 93: Entire article amended with relocations, p. 597, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-105 as it existed prior to 1993.

**10-14-402. Beneficiaries.** (1) The owner of a benefit contract shall have the right at all times to change the beneficiary in accordance with the governing documents of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its governing documents, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member. The portion so paid shall not exceed the sum of one thousand dollars.

(3) If at the death of any person insured under a benefit contract there is no lawful beneficiary to whom the proceeds shall be payable, the amount of such benefit, except to the extent that funeral benefits may be paid as provided in subsection (2) of this section, shall be payable to the estate of the deceased insured the same as other property not exempt; except that, if the owner of the certificate is other than the insured, such proceeds shall be payable to such owner.

**Source:** L. 93: Entire article amended with relocations, p. 598, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-107 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-402 is similar to § 10-14-107 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

**Confinement of benefits to limited class is distinguishing feature of fraternal benefit insurance.** One of the distinguishing features of fraternal benefit insurance from ordinary insurance is that the payment of death benefits in the former is usually confined to limited classes of persons. *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**No one outside of the class designated is eligible as a beneficiary.** *Mund v. Rehaume*, 51 Colo. 129, 117 P. 159 (1911).

**Who are eligible as beneficiaries is determined by the laws of the state where the society is organized.** *Mund v. Rehaume*, 51 Colo. 129, 117 P. 159 (1911); *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**Beneficiaries take under policy and not by inheritance.** A fraternal order, the death of a member in which entitles his surviving kin to certain benefits, is, for the purpose of determining who is entitled to the benefit, treated as a mutual insurance company, and the certificate of membership as a policy of life insurance, and, so far as possible, as the last will of the member. The policy measures the rights of the parties. The beneficiaries take thereunder and not by inheritance. *Empire Ranch & Cattle Co. v.*

Jones, 51 Colo. 128, 117 P. 176 (1911).

**Person named as beneficiary is presumed a legal one notwithstanding incorrect description by relationship.** In the absence of proof to the contrary, the presumption is that the person named as beneficiary in a fraternal benefit certificate is a legal one, notwithstanding the description by relationship of the person designated is not strictly correct. The test is: Does she come within one of the eligible classes? *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**Intent of insured in designating beneficiary is often sought.** The intent of a member of a fraternal insurance society in designating a beneficiary in a certificate, like that of a testator, is often sought for in construing the certificate. *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**Rights of beneficiary become vested on date of decedent's death.** The rights of a party entitled to the fund under a fraternal benefit

certificate become vested on the date of the decedent's death. *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**Attempted change of beneficiary not made in prescribed manner is inoperative.** As a general rule, an attempted change of beneficiary under a fraternal benefit certificate is inoperative if not made in the manner prescribed by the constitution and by laws of the association. *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**A divorced wife may take as beneficiary.** If a divorced wife has an insurable interest in the life of the husband, this will support a policy of insurance, and if she is dependent on him when he dies, e.g., for monthly payments of alimony, she is eligible to take as a beneficiary, although not then his wife. *Rose v. Bhd. of Locomotive Firemen & Enginemen*, 80 Colo. 344, 251 P. 537 (1926).

**10-14-403. Benefits not attachable.** No money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, beneficiary, or any other person who may have a right thereunder either before or after payment by the society.

**Source:** L. 93: Entire article amended with relocations, p. 599, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-122 as it existed prior to 1993.

#### ANNOTATION

**Fund realized from fraternal society insurance not liable for decedent's debts.** It is provided by this section that the fund shall not be liable for the debt of any certificate holder or

beneficiary named therein. *Hendrie & Balthoff Mfg. Co. v. Platt*, 13 Colo. App. 15, 56 P. 209 (1899) (decided prior to L. 11, p. 434, § 21, the earliest source of this section).

**10-14-404. Benefit contract.** (1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided pursuant thereto. The certificate, together with any riders or endorsements attached thereto, the governing documents of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(2) Any changes, additions, or amendments to the governing documents of the society duly made or enacted subsequent to the issuance of the certificate shall bind the owner and the beneficiaries and shall govern and control the benefit contract in all respects as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance; except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the



governing documents of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its governing documents that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or in lieu of or in combination therewith; however, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) Copies of any of the documents specified in this section, certified by the secretary or corresponding officer of the society, shall be received as evidence of the terms and conditions thereof.

(6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after July 1, 1994, shall meet the standard contract provision requirements not inconsistent with this article for like policies issued by life, sickness, and accident insurers in this state; except that a society may provide in its certificates for a grace period for payment of premiums of one full month. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's governing documents in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the governing documents of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate, but no less than the legal age of majority. A society may require approval of an application for membership to effect this transfer and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(8) A society may specify the terms and conditions on which benefit contracts may be assigned.

**Source:** L. 93: Entire article amended with relocations, p. 599, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-109 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-404 is similar to § 10-14-109 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

**This section does not validate every bylaw that might be adopted.** For example, it could not render effective a bylaw which would change the contract so as to impair vested rights

or deprive a member of substantial rights conferred expressly or impliedly by the contract itself. The reason is that "the obligation of every contract is protected from the state interference by the federal constitution". *Modern Woodmen of Am. v. White*, 70 Colo. 207, 199 P. 965 (1921).

**It contemplates only bylaws or amendments thereto that are reasonable**, and does not intend to make valid any amendment which

otherwise would be void on the ground of being unreasonable. *Modern Woodmen of Am. v. White*, 70 Colo. 207, 199 P. 965 (1921).

**Bylaw requiring actual proof of death for recovery is unreasonable.** A bylaw of a fraternal insurance society providing that the absence or disappearance of a member without proof of

actual death shall not entitle his beneficiary to recover on a benefit certificate, is unreasonable, and invalid as to a beneficiary under a certificate issued before the adoption of the bylaw. *Modern Woodmen of Am. v. White*, 70 Colo. 207, 199 P. 965 (1921).

**10-14-405. Nonforfeiture benefits, cash surrender values, certificate loans, and other options.** (1) For certificates issued prior to July 1, 1994, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall comply with the statutory provisions applicable immediately prior to July 1, 1993.

(2) For certificates issued on or after July 1, 1994, each certificate shall provide for paid-up nonforfeiture benefits, cash surrender values, loans, or other options in an amount and type not less than the corresponding amount ascertained in accordance with the statutes of this state applicable to life insurers issuing policies containing like benefits based upon applicable mortality tables.

**Source: L. 93:** Entire article amended with relocations, p. 601, § 1, effective July 1.

## PART 5

### FINANCIAL

**10-14-501. Investments.** A society shall invest its funds only in such investments as are authorized by the statutes of this state including but not limited to sections 10-3-210 to 10-3-242 and part 8 of article 3 of this title for the investment of the assets of life insurers.

**Source: L. 93:** Entire article amended with relocations, p. 601, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-111 as it existed prior to 1993.

**10-14-502. Funds.** (1) All assets shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the governing documents of such society.

(3) A society may, pursuant to resolution of its supreme governing body and with prior written approval of the commissioner, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the statutory provisions and regulations regarding life insurers establishing such accounts and issuing such contracts. To the extent the society deems it necessary to comply with any applicable federal or state statutes, or any rules issued pursuant thereto, the society may:

(a) Adopt special procedures for the conduct of the business and affairs of a separate account;

(b) Provide, for persons having beneficial interests therein, special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account; and

(c) Issue contracts on a variable basis to which section 10-14-404 (2) and (4) shall not apply.

**Source: L. 93:** Entire article amended with relocations, p. 602, § 1, effective July 1.



**Editor's note:** This section is similar to former § 10-14-110 as it existed prior to 1993.

**Cross references:** For the provisions regarding variable contracts issued by life insurers, see part 4 of article 7 of this title.

**10-14-503. Exemptions.** Except as provided in this section, societies shall be governed by the provisions of this article and shall be exempt from all other provisions of the insurance statutes of this state unless the terms of such statutes expressly apply to societies, or unless any such insurance statute is specifically made applicable to societies by this article. Societies shall comply with the applicable provisions of sections 10-3-109 (2), 10-3-208, and 10-8-530 (1.5); part 7 of article 3 of this title; and article 16 of this title.

**Source:** L. 93: Entire article amended with relocations, p. 603, § 1, effective July 1.  
L. 2001: Entire section amended, p. 1048, § 30, effective July 1.

**Editor's note:** This section is similar to former § 10-14-104 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-503 is similar to § 10-14-104 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

**Fraternal societies are exempt from general insurance laws.** An intention is manifest in the laws governing fraternal benefit societies to exempt them from the provisions of the general insurance laws of the state, particularly by the

provisions of this section. *Neighbors v. Westover*, 99 Colo. 231, 61 P.2d 585 (1936).

**They are also not controlled by general corporation law.** The legislative policy of Colorado has been to differentiate between commercial corporations and fraternal benefit societies, the latter being controlled by the provisions of this article and not by title 7 of these statutes. *Sovereign Camp of Woodmen of World v. Woodmen of World*, 73 Colo. 57, 213 P. 579 (1923).

**10-14-504. Taxation.** Every society organized or licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate and office equipment.

**Source:** L. 93: Entire article amended with relocations, p. 603, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-133 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-504 is similar to § 10-14-133 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

**Corporation must have all the indicia of a fraternal society to avoid premium tax.** The general assembly imposes a tax upon gross premium income of insurance companies. Fraternal and benevolent corporations defined as those which have a lodge system with a ritualistic form of work and representative form of government are exempted. It has clearly defined what is meant by "lodge system" and "representative government". Since the reorganiza-

tion, *Homesteaders* has not had a lodge system; it has not had a representative form of government; nor has it performed any ritualistic work. These are requirements essential to a status that would exempt it from the tax under discussion. *Beery v. Homesteaders Life Co.*, 146 Colo. 218, 361 P.2d 127 (1961).

**Fraternal benevolent societies are not exempt from sales taxes that were not contemplated in 1911** when they were declared to be "charitable and benevolent institution[s]" when such sales tax was first adopted in 1935 and the legislature imposed the tax on "all sales and purchases of tangible personal property at retail". This is particularly true if the legislation that created the tax listed specific exemptions

that did not include fraternal benevolent societies. Colo. Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996).

**The reintroduction of the words “and every” to a phrase making it read “all and every state tax” does not strengthen and reaffirm the broad scope of the exemption for**

**fraternal benefit societies**, it merely was replaced after being determined by the revisor of statutes to be redundant. The meaning of the phrase remains unchanged. Colo. Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996).

**10-14-505. Rules and regulations of commissioner.** The commissioner may establish and from time to time amend such reasonable rules and regulations as are necessary to enable the commissioner to carry out the commissioner’s duties under the laws of this state and the provisions of this article.

**Source: L. 93:** Entire article amended with relocations, p. 603, § 1, effective July 1.

## PART 6

### REGULATION

**10-14-601. Valuation.** (1) Standards of valuation for certificates issued prior to July 1, 1994, shall be those provided by the statutes applicable immediately prior to July 1, 1993.

(2) The minimum standards of valuation for certificates issued on or after July 1, 1994, shall be based on the valuation methods, standards, and practices (including interest assumptions) set forth in the statutes of this state applicable to life insurers issuing policies containing like benefits.

**Source: L. 93:** Entire article amended with relocations, p. 603, § 1, effective July 1.

**Cross references:** For provisions regarding valuation of life insurance policies, see §§ 10-7-101, 10-7-309, and 10-7-309.5.

**10-14-602. Reports.** Reports shall be filed in accordance with the provisions of this section. Every society transacting business in this state shall annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year, unless for cause shown such time has been extended by the commissioner. The statement shall at least include the substance of that which is required by what is known as the convention blank form adopted from year to year by the national association of insurance commissioners for fraternal benefit societies, including any instructions, procedures, and guidelines not in conflict with the provisions of this article, actuarial statements and requirements of reserves in accordance with the statutes of this state applicable to life insurers, and any additional information required by the commissioner.

**Source: L. 93:** Entire article amended with relocations, p. 603, § 1, effective July 1.

**10-14-603. Annual certificate of authority.** Societies that are authorized to transact business in this state as of July 1, 1993, and all societies authorized thereafter, may continue such business until June 30, 1994. The authority of all such societies may thereafter be renewed annually but shall terminate on the last day of the succeeding June. However, a certificate of authority so issued shall continue in full force and effect unless specifically terminated. For each such certificate of authority or renewal the society shall pay to the division of insurance fees as prescribed pursuant to sections 10-3-207 and 24-31-104.5, C.R.S. A duly certified copy or duplicate of such certificate of authority shall be prima facie evidence that the society is a fraternal benefit society within the meaning of this article.



**Source: L. 93:** Entire article amended with relocations, p. 604, § 1, effective July 1.  
**L. 2010:** Entire section amended, (HB 10-1385), ch. 204, p. 884, § 6, effective May 5.  
**L. 2012:** Entire section amended, (SB 12-110), ch. 158, p. 561, § 8, effective July 1.

**Editor's note:** This section is similar to former § 10-14-116 (1) as it existed prior to 1993.

**10-14-604. Cash capital.** To avoid situations where a society's transactions would create undue financial risks to its enrollees, subscribers, certificate holders, or the people of this state, the regulations specified in this section are authorized. The commissioner may by regulation establish standards consistent with those of the national association of insurance commissioners which require any society to maintain a minimum surplus level. The minimum surplus level shall reflect the type, volume, and nature of the insurance business being transacted and the type of entity for which the surplus levels are being established in accordance with the assessment features of societies. The regulation may additionally require the submission of an opinion by a qualified actuary which states whether the surplus level of the entity is sufficient for the authority requested.

**Source: L. 93:** Entire article amended with relocations, p. 604, § 1, effective July 1.

**10-14-605. Examination of societies.** The examination of societies, both at the initial formation and at any time during which any such society is authorized to transact business in this state, shall follow the same standards and procedures that apply to life insurers. The cost of any such examination may be assessed by the commissioner to be paid by the society.

**Source: L. 93:** Entire article amended with relocations, p. 604, § 1, effective July 1.

**Cross references:** For provisions relating to examination of insurance companies, see part 2 of article 1 of this title and § 10-3-806.

**10-14-606. Publications.** Pending, during, or after an examination or investigation of any domestic, foreign, or alien society, the commissioner shall make public no financial statement, report, or finding, nor shall the commissioner permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof has been served upon such society at its home office or until such society has been afforded a reasonable opportunity to answer any such financial statement, report, or finding and to make such showing in connection therewith as it may desire.

**Source: L. 93:** Entire article amended with relocations, p. 604, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-130 as it existed prior to 1993.

**10-14-607. Grounds for injunction, liquidation, and receivership of domestic society.** (1) The commissioner shall notify a domestic society when the commissioner upon investigation finds that a domestic society:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any provision of this article;
- (c) Is not fulfilling its contracts in good faith;
- (d) Has a membership of less than four hundred after an existence of one year or more;
- (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, or the public; or
- (f) Is using methods which, although not otherwise specifically proscribed by statute, nevertheless renders its operation hazardous, or its condition unsound, to its members or the public.

(2) If the commissioner notifies a society pursuant to subsection (1) of this section, the commissioner may utilize the procedures, practices, standards, and provisions of parts 4 and 5 of article 3 of this title. In applying said provisions, the application of the assessment feature of the certificate shall be first considered.

**Source: L. 93:** Entire article amended with relocations, p. 605, § 1, effective July 1.

**10-14-608. Foreign or alien society - admission.** No foreign or alien society shall transact business in this state without a certificate of authority issued by the commissioner. Any such society desiring admission to this state shall comply substantially with the requirements and limitations of this article applicable to domestic societies, excluding any deposit requirements in section 10-14-301 (5). Any such society may be authorized to transact business in this state upon filing with the commissioner such information as may be requested.

**Source: L. 93:** Entire article amended with relocations, p. 605, § 1, effective July 1.

**10-14-609. Suspension - revocation - denial of license of foreign or alien society.**  
(1) The commissioner shall notify a foreign or alien society of any of the deficiencies specified in this subsection (1) and state in writing the reasons for the commissioner's dissatisfaction when the commissioner, upon investigation, finds that a foreign or alien society transacting or applying to transact business in this state:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any provision of this article;
- (c) Is not fulfilling its contracts in good faith;
- (d) Is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public; or
- (e) Is using methods which, although not otherwise specifically proscribed by statute, nevertheless renders its operation hazardous, or its condition unsound, to its members or the public.

(2) As part of the notification required by subsection (1) of this section, the commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After such notice, the society shall have a thirty-day period in which to comply with the commissioner's request for correction, and, if the society fails to comply, the commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why its certificate of authority should not be suspended, revoked, or denied. If on such date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked, or denied, the commissioner may suspend or deny the certificate of authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that such suspension or denial should be withdrawn, or the commissioner may revoke the authority of the society to do business in this state.

(3) Nothing contained in this section shall be taken or construed as preventing any foreign or alien society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business in this state.

(4) In addition to the provisions of subsections (1) to (3) of this section, the provisions of section 10-1-110, except for the provisions of paragraphs (a) to (c) of subsection (1) of said section, shall apply to societies doing business in this state.

**Source: L. 93:** Entire article amended with relocations, p. 605, § 1, effective July 1.  
**L. 2003:** (4) amended, p. 618, § 18, effective July 1.

**10-14-610. Injunction.** No application or petition for injunction in proceedings for, the dissolution of, or the appointment of a receiver for any domestic, foreign, or alien society or lodge thereof shall be recognized in any court of this state unless made by the attorney general upon request of the commissioner.



**Source: L. 93:** Entire article amended with relocations, p. 606, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-128 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-610 is similar to § 10-14-128 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

**This section and § 10-14-127 should be construed together** because if we construe the latter alone, said word "such" would be mean-

ingless. *Woodmen of World v. McCue*, 88 Colo. 209, 294 P. 947 (1930).

**"Such domestic society" refers to a society about to be dissolved**, and the attorney general is the only one authorized to maintain an injunction suit against a society in that condition. *Woodmen of World v. McCue*, 88 Colo. 209, 294 P. 947 (1930).

**10-14-611. Licensing of agents.** Agents of societies shall be licensed in accordance with the statutory provisions regulating the licensing, revocation, suspension, or termination of a license of resident and nonresident agents as provided in part 4 of article 2 of this title, and subject to the exceptions provided in section 10-2-401 (3).

**Source: L. 93:** Entire article amended with relocations, p. 606, § 1, effective July 1; (2) amended, p. 1390, § 8, effective January 1, 1995. **L. 94:** Entire section amended, p. 741, § 2, effective January 1, 1995.

**Editor's note:** Amendments made to § 10-14-116 (2) by House Bill 93-1270 were renumbered and harmonized with House Bill 93-072.

**10-14-612. Unfair methods of competition and unfair and deceptive acts and practices.** Every society authorized to do business in this state shall be subject to the provisions of part 11 of article 3 of this title relating to unfair insurance trade practices; except that nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

**Source: L. 93:** Entire article amended with relocations, p. 607, § 1, effective July 1.

#### PART 7

#### MISCELLANEOUS

**10-14-701. Service of process.** Societies authorized to do business in this state shall be subject to the same provisions and requirements regarding service of process as life insurers in accordance with section 10-3-107.

**Source: L. 93:** Entire article amended with relocations, p. 607, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-118 as it existed prior to 1993.

#### ANNOTATION

**Annotator's note.** Since § 10-14-701 is similar to § 10-14-118 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case

construing that provision has been included in the annotations to this section.

**Process on foreign societies must be made on insurance commissioner.** Under this section

service of process upon foreign societies can only be made upon the commissioner of insurance. The provisions of title 7 are not applicable

to such societies. *Galligan v. Independent Order of Foresters*, 84 Colo. 198, 269 P. 584 (1928).

**10-14-702. Fees.** Except as otherwise specifically provided in this article, societies shall pay the applicable fees specified in sections 10-3-207 and 24-31-104.5, C.R.S., and be subject to the assessment of late fees pursuant to section 10-3-109 (2) and (3).

**Source:** L. 93: Entire article amended with relocations, p. 608, § 1, effective July 1.  
L. 2010: Entire section amended, (HB 10-1385), ch. 204, p. 884, § 7, effective May 5.  
L. 2012: Entire section amended, (SB 12-110), ch. 158, p. 562, § 9, effective July 1.

**10-14-703. Review.** All final decisions and findings of the commissioner made under the provisions of this article shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 93: Entire article amended with relocations, p. 608, § 1, effective July 1.

**10-14-704. Penalties.** (1) Any person, officer, member, or examining physician of any society authorized to do business under this article who knowingly or willfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars, nor more than two thousand five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

(2) Any person who willfully makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder and any person who willfully makes any false statement in any verified report or declaration under oath required or authorized by this article is guilty of perjury in the second degree.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any fraternal benefit society not licensed to do business in this state, or who solicits membership for, or in any manner assists in procuring membership in, any such society not authorized as provided in this article to do business in this state as defined in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

(4) Any society, or any officer, agent, or employee thereof neglecting or refusing to comply with, or violating any of the provisions of this article, the penalty for which neglect, refusal, or violation is not specified in this section, is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than two thousand dollars.

**Source:** L. 93: Entire article amended with relocations, p. 608, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-134 as it existed prior to 1993.

**Cross references:** For the provisions relating to perjury in the second degree, see § 18-8-503 and § 18-1.3-501.

**10-14-705. Exemption of certain societies.** (1) Nothing in this article shall be construed to affect or apply to:

(a) Grand or subordinate lodges of masons, odd fellows, or knights of Pythias (exclusive of the insurance department of the supreme lodge knights of Pythias) or the junior order of united American mechanics (exclusive of the beneficiary degree or insurance branch of the national council junior order united American mechanics); nor to grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges; nor to similar societies which do



not issue insurance certificates. Members of lodges of the independent order of odd fellows, knights of Pythias, and other organizations paying periodical or funeral benefits shall not be individually liable for the payment of periodical or funeral benefits or other liabilities of the lodge or other organizations, but the same shall be payable only out of the treasury of such lodges or organizations.

(b) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations.

(2) The commissioner may require from any society or association, by examination or otherwise, such information as will enable the commissioner to determine whether such society or association is exempt from the provisions of this article.

(3) Any fraternal benefit society organized and incorporated before June 2, 1911, and operating within the definition set forth in sections 10-14-101 to 10-14-104, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article and shall have all the privileges and be subject to all the provisions and regulations of this article; except that the provisions of this article requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits shall not apply to such society.

**Source:** L. 93: Entire article amended with relocations, p. 608, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-14-132 as it existed prior to 1993.

ANNOTATION

**Annotator's note.** Since § 10-14-705 is similar to § 10-14-132 as it existed prior to the 1993 amendment to article 14 which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

**By this section the general assembly has given express recognition in the insurance**

**laws to** "grand or subordinate lodges of Masons", and the words "Mason" and "Masonic" have thus acquired a secondary meaning. These references emphasize the danger of the indiscriminate and unauthorized use of such name, even more so than in ordinary cases. *Prince Hall Grand Lodge v. Hiram Grand Lodge*, 85 Colo. 17, 273 P. 648 (1928).

PRENEED FUNERAL CONTRACTS

ARTICLE 15

Preneed Funeral Contracts

**Editor's note:** This article was numbered as article 19 of chapter 14, C.R.S. 1963. This article was repealed and reenacted in 1992 and was subsequently repealed and reenacted in 1995, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1995 are shown in editor's notes following those sections that were relocated.

10-15-101.	Legislative declaration.	10-15-108.	Standard for investments by trustees.
10-15-102.	Definitions.	10-15-109.	Disbursements - excess trust assets.
10-15-103.	License procedure - records - examination of records.	10-15-110.	Discharge of preneed contract - disbursements by trustees.
10-15-104.	Annual report.	10-15-111.	Insurance-funded preneed contracts.
10-15-105.	Contract requirements - re-fund - full performance.	10-15-112.	Rules.
10-15-106.	Preexisting contracts.		
10-15-107.	Deposit of funds with trustee.		

10-15-113.	Applicability of administrative procedure act.	10-15-117.	Reinstatement of license.
10-15-114.	Investigations - actions against licensees.	10-15-118.	Violation.
10-15-115.	Injunctions - cease-and-desist orders.	10-15-119.	Immunity from prosecution.
10-15-116.	Surrender of license.	10-15-120.	Rule against perpetuities inapplicable.
		10-15-121.	Other insurance laws applicable.

**10-15-101. Legislative declaration.** The general assembly declares that the business of selling preneed contracts whereby the seller agrees to provide funeral, interment, entombment, or cremation merchandise or services in the future or for future use is affected with a public interest, and the preservation of the safety and welfare of the public from unconscionable dealing requires regulation of the sale of such contracts and of the disposition of funds obtained as a result of such sales.

**Source: L. 95:** Entire article R&RE, p. 1031, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-101 as it existed prior to 1995.

### ANNOTATION

**Law reviews.** For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982).

**Free competition in the area of preneed funeral contracts** assures that the interests of the public will be advanced, and that members of the public will be assured of obtaining a contract best suited to their desires and needs. *Memorial Gardens, Inc. v. Olympian Sales & Mgt. Consultants, Inc.*, 661 P.2d 296 (Colo. App. 1982).

- 10-15-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) "Broker" means any contract seller who must utilize the services of a general provider to fulfill the terms of a preneed contract.
  - (1.5) "Cash advances" means consideration which can be used at the time of need at the discretion of the contract buyer or his or her heirs, assigns, or authorized representatives for merchandise or services the prices of which are not guaranteed in a preneed contract and which merchandise or services are ancillary and in addition to merchandise and services the prices of which are guaranteed in a preneed contract.
  - (2) "Cemetery" means any place, including a mausoleum, niche, or crypt, in which there is provided space either below or above the surface of the ground for the interment of the remains of human bodies.
  - (3) "Commissioner" means the commissioner of insurance.
  - (4) "Common trust funds" means a common trust as defined by the provisions of article 24 of title 11, C.R.S. This article does not preclude the use of a common trust to the extent that the individual contract seller complies with the provisions of this article.
  - (5) "Contract buyer" means a person who purchases merchandise and services through a preneed contract.
  - (6) "Contract seller" means a person who sells merchandise and services through a preneed contract.
  - (7) "Final resting place" means a space, either below or above the surface of the ground, for the interment of the remains of human bodies.
  - (8) "Funds" means money paid by a contract buyer, excluding interest, finance charges, and late fees paid, for the purchase of a preneed contract.
  - (9) "General provider" means a person who engages, on a contract basis, in the usual business of providing the merchandise and performing the services, at time of need, for the final disposition of a deceased human body, and does not include subcontractors of a general provider.
  - (10) "Merchandise" means goods which are normally sold or offered for sale directly to the public for use in connection with funeral services and does not include overhead items.



(11) "Overhead items" means items such as embalming fluid, sanitary supplies, and other items used in the performance of funeral services.

(12) "Person" means an individual, partnership, firm, joint venture, corporation, company, association, joint stock association, or limited liability company.

(13) (a) "Preneed contract" means any written contract, agreement, or mutual understanding, any series or combination of contracts, agreements, or mutual understandings, or any security or other instrument which is convertible into a contract, agreement, or mutual understanding whereby it is agreed that, upon the death of the preneed contract beneficiary, a final resting place, merchandise, or services shall be provided or performed in connection with the final disposition of the preneed contract beneficiary's body. Consideration for a preneed contract is funds or the assignment of life insurance benefits.

(b) A contract for merchandise whereby the buyer takes physical possession of the merchandise at the time of entering into the contract shall not be included in the definition of a preneed contract.

(c) Providing a developed final resting place within a designated cemetery approved for the interment, entombment, or inurnment of human remains is not subject to the provisions of this article. Providing an undeveloped final resting place shall be exempt from the provisions of this article only if the cemetery contains unsold developed final resting places representing at least twenty-five percent of the outstanding paid-in-full contracts for undeveloped final resting places. In the event such specific and identifiable final resting place is not developed for use at the time of need and full payment has been made, then the contract must provide the purchaser with an immediate alternate and comparable final resting place at the same cemetery or a full refund of moneys paid.

(14) "Preneed contract beneficiary" means, for any preneed contract entered into on or after July 1, 1967, any person specified in the preneed contract, upon whose death a final resting place, merchandise, or services of any nature shall be provided, delivered, or performed.

(15) "Preneed contract price" means the total price listed on a preneed contract for all items listed and includes cash advances.

(16) "Services" means any services which may be used to care for and prepare deceased human bodies for burial, cremation, or other final disposition.

(17) "Trustee" means a chartered state bank, savings and loan association, credit union, or trust company that is authorized to act as fiduciary and that is subject to supervision by the state bank or financial services commissioner or a national banking association, federal credit union, or federal savings and loan association authorized to act as fiduciary in Colorado.

(18) "Trust funds" means funds deposited by a contract seller with a trustee.

(19) "Trust instrument" means the documents pursuant to which a trustee receives, holds, invests, and disburses trust funds.

**Source:** L. 95: Entire article R&RE, p. 1031, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-102 as it existed prior to 1995.

**10-15-103. License procedure - records - examination of records.** (1) (a) No contract seller shall enter into a preneed contract or accept any funds or other consideration without first securing a license from the commissioner. Application for an initial license shall be in writing, signed by the applicant, and duly verified on forms furnished by the commissioner. Each application shall be accompanied by payment of five hundred dollars and a current balance sheet, income statement, and statement of cash flow to demonstrate a net worth of at least ten thousand dollars, as evidenced by the signature of a certified public accountant ("CPA") or public accountant ("PA"), or, if prepared by the applicant, accompanied by a current tax return; or, in the alternative, the applicant shall furnish the commissioner a surety bond in the amount of ten thousand dollars to honor preneed contract obligations.

(b) (I) With the submission of the initial application described in paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the commissioner. The

commissioner shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation.

(II) For purposes of this paragraph (b), "applicant" means an individual and, in the case of a corporation, each officer and director of the corporation.

(2) Upon receipt of a complete initial application and license fee, the commissioner shall issue a license to the applicant unless the commissioner determines that:

(a) The applicant has made false statements or misrepresentations in such application; or

(b) The applicant does not meet the conditions of subsection (1) of this section; or

(c) The applicant is not duly authorized to transact business in the state of Colorado; or

(d) Any officer, director, or controlling shareholder of the applicant has been convicted of a crime involving fraud or misappropriation or misuse of funds; or

(e) The applicant has not filed a preneed contract, general provider contract, or trust agreement and assignment form, where applicable, which comply with the provisions of this article; or

(f) The applicant is an insurance company.

(3) (a) The contract seller shall keep accurate accounts, books, and records of all transactions, copies of all preneed contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, copies of all annual reports, the name of the preneed contract beneficiary as to each preneed contract, the name of the trustee holding trusted funds received under each preneed contract, copies of statutory reports made to the trustee and statutory reports provided by the trustee, and any other information necessary to verify compliance with the provisions of this article.

(b) Such records as stated in paragraph (a) of this subsection (3) shall be kept by the contract seller for at least five years following the earliest of the following:

(I) The death of the preneed contract beneficiary; or

(II) The removal of funds from trust; or

(III) The termination of the assignment of life insurance benefits.

(4) (a) The contract seller shall make all books and records available to the commissioner for examination. The commissioner, or a qualified person designated by the commissioner, during ordinary business hours, shall examine the books, records, and accounts of the contract seller at least once every five years, and more often as necessary to ensure compliance with this article, and for that purpose may require the attendance of and examine under oath all persons whose testimony the commissioner may require.

(b) The commissioner may designate a qualified person who is not an employee of the division of insurance to examine any contract seller, and the reasonable expenses and charges of such examiner shall be paid directly by the contract seller to any such authorized examiner. The examinee may contest the amount of fees, costs, and expenses charged to it by such person by filing an objection with the commissioner that sets forth the charges the examinee considers to be unreasonable, together with the basis for such claim of unreasonable charges. No amounts that are so disputed will be due to the examiner unless and until the commissioner has reviewed the objection and made a written finding that the disputed charges were reasonable in relation to the examination performed.

(5) (a) Every license shall expire on June 30. Every license shall be renewed annually and automatically extended upon filing of a complete application on a form provided by the commissioner, demonstration of compliance with the conditions of subsection (2) of this section, payment of the fee prescribed in paragraph (b) of this subsection (5), and the filing of the annual report which shall be due by March 31 of each year. A filing made later than March 31 may be subject to a late fee of up to one hundred dollars per day for each day received after such date. If the contract seller is in compliance with this section, the contract seller shall be deemed licensed unless and until notified by the commissioner that the renewal does not comply with this section.

(b) The annual renewal fee shall be based upon the aggregate preneed contract price of all preneed contracts outstanding at the end of each calendar year. If the aggregate preneed contract price is:



(I) One hundred thousand dollars or less, the annual renewal fee shall be one hundred dollars;

(II) Greater than one hundred thousand dollars but not exceeding five hundred thousand dollars, the annual renewal fee shall be two hundred dollars;

(III) Greater than five hundred thousand dollars but not exceeding one million dollars, the annual renewal fee shall be five hundred dollars;

(IV) Greater than one million dollars but not exceeding five million dollars, the annual renewal fee shall be one thousand dollars;

(V) Greater than five million dollars but not exceeding ten million dollars, the annual renewal fee shall be one thousand five hundred dollars;

(VI) In excess of ten million dollars, the annual renewal fee shall be two thousand dollars.

(6) Notwithstanding the amount specified for any fee in this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source:** L. 95: Entire article R&RE, p. 1034, § 1, effective May 25. L. 98: (6) added, p. 1328, § 32, effective June 1. L. 2002: (1) amended, p. 971, § 3, effective June 1. L. 2010: (4) amended, (HB 10-1220), ch. 197, p. 853, § 11, effective July 1.

**Editor's note:** This section is similar to former § 10-15-103 as it existed prior to 1995.

**10-15-104. Annual report.** Each contract seller shall file an annual report on a calendar year basis with the commissioner on a form as provided by the commissioner. In the annual report, each contract seller who is required to deposit funds with a trustee shall state the name of each trustee with which it has trust funds on deposit and the amount remaining on deposit in the trust fund on December 31. Each contract seller shall report annually the amount of all annual preneed aggregate merchandise sales and the disposition of such merchandise. Any contract seller which has voluntarily or involuntarily discontinued the sale of preneed contracts shall not be required to obtain a renewal of its license, but it shall continue to make annual reports to the commissioner until all such contracts have been fully performed by it and shall pay fifty percent of the fee structure prescribed by section 10-15-103 (5) (b).

**Source:** L. 95: Entire article R&RE, p. 1036, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-104 as it existed prior to 1995.

**Cross references:** For state laws relating to investment of funds by savings and loan associations, see § 11-41-114; for investment of funds by banks, see article 105 of title 11; for investment of funds by credit unions, see § 11-30-104.

**10-15-105. Contract requirements - refund - full performance.** (1) (a) The preneed contract shall bind the contract seller, or the heirs, assigns, or duly authorized representatives of the contract seller, to provide the services or merchandise contained in the preneed contract.

(b) (I) The contract seller shall certify pursuant to subparagraphs (II), (III), and (IV) of this paragraph (b) with the commissioner each form of preneed contract offered or sold by such contract seller unless the contract seller notifies the commissioner that it will use preauthorized forms made available by the commissioner. For preneed contracts that are funded by the assignment of life insurance benefits, the assignment shall be deemed to be part of the preneed contract, and the contract seller shall certify pursuant to subparagraphs

(II), (III), and (IV) of this paragraph (b) with the commissioner a copy of each form of assignment.

(II) Each contract seller of preneed contracts shall submit an annual report to the commissioner listing any forms of preneed contracts and each form of assignment used or to be used by the contract seller. Such listing shall be submitted on or before July 15, 2000, and on or before July 1 of each subsequent year. The annual report shall include a certification by the contract seller that, to the best of the seller's knowledge, each form for preneed contracts and assignments in use complies with Colorado law. The commissioner may promulgate rules specifying the necessary elements of the certification.

(III) Each contract seller shall submit to the commissioner a list of new preneed contracts and forms of assignment. Such listing shall include a certification by the contract seller that, to the best of the seller's knowledge, each new preneed contract or form of assignment proposed complies with Colorado law. The commissioner may promulgate rules specifying the necessary elements of the certification.

(IV) The commissioner shall have the power to examine and investigate the preneed contract seller to determine whether the preneed contracts or forms of assignment comply with the seller's certification and Colorado law.

(c) At the time the preneed contract is entered into, the contract seller shall furnish the contract buyer with an accurate copy of the preneed contract.

(d) If the contract seller is a broker, or if the preneed contract requires any services to be performed or merchandise to be provided by a general provider other than the contract seller, the contract seller shall furnish the contract buyer with a copy of the agreement or a certificate evidencing an agreement between the contract seller and such general provider whereby the general provider or the heirs, assigns, or duly authorized representatives of such general provider are obligated to perform the services or provide the merchandise as stated in the preneed contract. Such agreement or certificate shall state that the general provider shall perform the contract services and provide the merchandise specified in the agreement between the contract seller and the general provider, under any fully paid preneed contract, without recourse against the contract buyer or his or her heirs, assigns, or duly authorized representatives for any funds due from the contract seller. Each such agreement or certificate evidencing each agreement shall be filed with the commissioner. As an alternative to having a separate agreement with a general provider, the preneed contract shall contain a signature and statement of guarantee by the general provider or an authorized agent of said general provider to provide the merchandise and services as agreed in the preneed contract.

(2) A preneed contract shall be written in clear, understandable language and shall be printed or typed in at least eight-point type.

(3) A preneed contract shall conform to all other applicable state and federal statutes and regulations.

(4) Each preneed contract shall:

(a) State on its face that "This preneed contract is not insurance; however, preneed contracts and contract sellers are subject to regulation by the Colorado Division of Insurance.";

(b) State the name and address of the principal office of the preneed contract seller and, if not the same, the name and address of the principal office of the general provider;

(c) Identify the contract buyer and the preneed contract beneficiary;

(d) State the terms and conditions for cancellation by the contract buyer within the first seven days of the contract buyer's signature to the preneed contract during which period the contract buyer may provide the contract seller with written notice of cancellation. The contract seller shall forward a one hundred percent refund to the contract buyer within ten calendar days of receipt of the written cancellation.

(e) Provide that the contract buyer may cancel the preneed contract at any time after the seven-day period provided in paragraph (d) of this subsection (4) and that any return of consideration be made to the contract buyer, heirs, assigns, or duly authorized representatives in a timely manner, not to exceed thirty days after the date of the request for return of consideration in lieu of performance, and not to exceed forty-five days after the date of request for return of consideration in case of default or cancellation;



(f) Contain a provision expressing the right of the contract seller to perform under the preneed contract if the heirs, assigns, or duly authorized representatives of the preneed contract beneficiary have not canceled the preneed contract within one hundred sixty-eight hours after the death of the preneed contract beneficiary, or if previously authorized to perform prior to such one hundred sixty-eight hours;

(g) Specify the services or merchandise, or both, to be provided, and clearly indicate that the preneed contract seller guarantees and fully pays for each such service or merchandise, or both, when it is provided, except for cash advances;

(h) Contain a provision providing that the preneed contract seller shall provide merchandise as described in the preneed contract or of equivalent quality;

(i) (I) State on its face the manner in which it is funded. Each preneed contract shall clearly state the terms of the consideration between the contract seller and the contract buyer.

(II) Such terms shall require that the contract buyer be responsible for paying any unpaid balance of the preneed contract price.

(III) Where the consideration is an assignment of life insurance benefits, excluding annuities, any unpaid balance shall not exceed the price of the services or merchandise provided at the time of death of the preneed contract beneficiary, based on the general provider's general price list then in force, in excess of the value of the assignment. Such assignment shall not require the payment of any unpaid balance after the third anniversary of the issue date of the preneed contract. The contract seller may require any assignment which has been reduced in value by action of the policy owner to be returned to full value.

(j) Contain a provision stating that the contract seller is responsible for furnishing the merchandise and services expressed in the preneed contract unless the contract buyer is in default, the contract is canceled, or the assignment funding the contract is void, canceled, or otherwise reduced in value by action of the contract buyer. The preneed contract shall provide that in the case of the death of the preneed contract beneficiary, the contract buyer or, if the contract buyer is deceased, such buyer's heirs, assigns, or duly authorized representatives are entitled to a full return of consideration instead of performance by the contract seller. It shall further provide whether or not a preneed contract, in case of default or cancellation, a preneed contract which has not been performed, or promissory note executed in connection therewith, may allow the contract seller to retain liquidated damages. In no event shall such liquidated damages exceed the lesser of the funds received or fifteen percent of the total preneed contract price. Such liquidated damages are deemed to be the reasonable value of administrative and sales costs incurred.

(5) Any preneed contract for which merchandise has been contracted, manufactured, and placed in storage shall guarantee that the merchandise, when delivered, shall be merchantable and fit for its intended purpose.

(6) No contract seller shall condition a preneed contract upon the purchase of any other item or contract unless such preneed contracts, other contracts, and any other item can be independently purchased at the same stated price. Nothing in this section shall prohibit the sale, purchase, or assignment of life insurance benefits to be identified in the preneed contract and be used as full or partial consideration to fund a preneed contract.

(7) The contract seller shall be deemed to have fully performed under the preneed contract when:

(a) The services or merchandise, or both, contracted for have actually been used in conjunction with the death of the preneed contract beneficiary; or

(b) The services contracted for have actually been furnished; or

(c) The contract buyer has taken physical possession of the merchandise; or

(d) The merchandise contracted for, which the contract buyer has agreed to purchase prior to need, has been manufactured and placed in storage and a certificate of title or warehouse receipt has been issued in the contract buyer's name, any such certificate of title or warehouse receipt having effectively and unalterably transferred ownership of the merchandise to the contract buyer and all such merchandise having been fully protected by casualty insurance against all hazards; or

(e) Full payment to the manufacturer has been made by the contract seller within forty-five days after the sale of the merchandise contracted for, which the contract buyer has

agreed to purchase prior to need, by the contract buyer, the merchandise has been manufactured not later than six months thereafter and placed in storage, and a certificate of title or warehouse receipt has been issued in the contract buyer's name, any such certificate of title or warehouse receipt having effectively and unalterably transferred ownership of the merchandise to the contract buyer and all such merchandise having been fully protected by casualty insurance against all hazards, as stated in paragraph (d) of this subsection (7); or

(f) The merchandise contracted for, which the contract buyer has agreed to purchase prior to need, has been installed upon or placed within the interment site of the contract buyer, including the place of interment, entombment, or ground burial.

(8) In any preneed contract that includes merchandise contracted for pursuant to paragraphs (d) and (e) of subsection (7) of this section, upon full payment for the merchandise by the contract buyer, the title shall be deemed transferred to the contract buyer.

(9) Notwithstanding any other provision of this section to the contrary, upon the request and consent of the contract buyer, a preneed contract, related trust, or assignment of the ownership or the benefits of a life insurance policy may be made irrevocable. However, the contract buyer, or his or her heirs, assigns, or duly authorized representatives may, at any time before performance, transfer the funds or the assignment to any other contract seller or general provider as required by applicable laws.

**Source:** L. 95: Entire article R&RE, p. 1036, § 1, effective May 25. L. 2000: (1)(b) amended, p. 469, § 9, effective August 2.

**Editor's note:** This section is similar to former § 10-15-105 as it existed prior to 1995.

**Cross references:** For the legislative declaration contained in the 2000 act amending subsection (1)(b), see section 1 of chapter 135, Session Laws of Colorado 2000.

#### ANNOTATION

**General assembly did not intend all preneed contracts to be terminable at will** and such contracts may be subject to the tort of

intentional interference with contract relations. *Memorial Gardens v. Olympian Sales & Management*, 690 P.2d 207 (Colo. 1984).

**10-15-106. Preexisting contracts.** This article shall not be construed so as to impair or affect the obligation of any preexisting lawful contract.

**Source:** L. 95: Entire article R&RE, p. 1041, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-106 as it existed prior to 1995.

**10-15-107. Deposit of funds with trustee.** (1) If a contract seller enters into a preneed contract in which the consideration is funds, the contract seller shall deposit not less than seventy-five percent of the total preneed contract price with a trustee. The contract seller shall deposit all funds in excess of twenty-five percent of the total preneed contract price with a trustee within forty-five days after receipt thereof. All funds deposited with a trustee shall be deposited under the terms of a trust instrument, which shall not be inconsistent or in conflict with the provisions of this article, and shall be held in trust by the trustee pursuant to the provisions of this article. Copies of all trust instruments and amendments to such trust instruments shall be filed with the commissioner.

(2) For each deposit with a trustee, the contract seller shall make a record of, and provide the trustee with, the name and address of the contract buyer, the total preneed contract price, and the amount of trustable funds. The contract seller shall keep such record, as to each contract buyer, until five years following the earlier of:

(a) The death of the preneed contract beneficiary; or

(b) The removal of funds from trust.

(3) Within thirty days following the last day of the calendar quarter, the contract seller shall provide to the trustee a detailed listing of all preneed contracts outstanding, the name



and address of each contract buyer, the total preneed contract price, accumulated receipts, and the total amount of funds trusted for each preneed contract. If the trustee finds a significant discrepancy between such cumulative listing and the aggregate deposits in trust, the trustee shall contact the contract seller in order to reconcile the discrepancy. If the trustee is unable to resolve such discrepancy to the trustee's satisfaction, the trustee shall promptly notify the commissioner in writing of such discrepancy.

**Source:** L. 95: Entire article R&RE, p. 1041, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-107 as it existed prior to 1995.

**10-15-108. Standard for investments by trustees.** (1) Savings and loan associations acting as trustees under the terms of this article shall invest trust funds as otherwise authorized under the laws of this state relating to the investment of funds by savings and loan associations and the federal law governing such investments, but savings and loan associations shall accept trust funds only to the extent that the full amount thereof is insured by the federal deposit insurance corporation or its successor.

(2) Banks and trust companies acting as trustees under the terms of this article shall be subject to the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of others, trustees shall be required to have in mind the responsibilities which are attached to such offices and the size, nature, and needs of the estates entrusted to their care and shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the standards set forth in this subsection (2), trustees are authorized to acquire and retain every kind of property, real, personal, and mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, savings accounts in insured savings and loan associations, stocks, preferred or common, securities of any open-end or closed-end management type investment company or investment trust, and participations in common trust funds, which men of prudence, discretion, and intelligence would acquire or retain for their own account.

(3) Credit unions acting as trustees under the terms of this article shall invest funds received under an account agreement as authorized under the laws of this state or the United States relating to the investment of funds by credit unions, but a credit union shall accept trust funds only to the extent that the full amount thereof is insured by the national credit union share insurance fund or other insurer approved by the commissioner of financial services.

**Source:** L. 95: Entire article R&RE, p. 1041, § 1, effective May 25. L. 2004: (1) amended, p. 148, § 52, effective July 1.

**Editor's note:** This section is similar to former § 10-15-108 as it existed prior to 1995.

**10-15-109. Disbursements - excess trust assets.** At reasonable times, and unless the trustee is notified by the commissioner that the preneed seller is in violation of the provisions of this article or by the contract seller not to disburse trust assets, the trustee shall disburse excess trust assets to the contract seller in accordance with the terms of the preneed contract between the contract buyer and the contract seller. The trustee shall not disburse any excess trust assets until such time as the value of such trust assets exceeds the total of all funds paid by the contract buyers under the preneed contracts. If more than one trust account is used by the contract seller, the aggregate of all trust accounts must exceed the total of all funds paid by all contract buyers before any disbursement by the trustee. It is the obligation and responsibility of the trustee to conduct at least annual valuations of the market value of the assets held in trust, which may include accrued interest.

**Source: L. 95:** Entire article R&RE, p. 1042, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-109 as it existed prior to 1995.

**10-15-110. Discharge of preneed contract - disbursements by trustees.** (1) Before disbursing any trust assets to discharge a preneed contract, the trustee shall determine that the amount of assets to be released does not exceed the funds trusted.

(2) If a preneed contract is cancelled by the contract buyer or the contract buyer's heirs, assigns, or duly authorized representatives, the trustee shall require a copy of the signed cancellation request before releasing trust assets.

(3) If a preneed contract is cancelled by the contract seller due to a default by the contract buyer, the trustee shall require an affidavit from an officer or owner of the contract seller setting forth such default before releasing funds.

(4) If a preneed contract is performed by the contract seller, the trustee shall require an affidavit from an officer or owner of the contract seller setting forth such performance before releasing funds.

**Source: L. 95:** Entire article R&RE, p. 1042, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-110 as it existed prior to 1995.

**10-15-111. Insurance-funded preneed contracts.** (1) If a contract seller enters into a preneed contract in which the consideration is the assignment of life insurance benefits, such preneed contract shall state that all or part of such assigned funds shall be paid to the contract seller to pay for the services or merchandise, or both, included in the preneed contract. The preneed contract and the assignment shall identify the policy being assigned including the name of the issuing company. The initial benefit assigned shall not exceed the preneed contract price when the assignment is executed. The purchaser of any insurance policy to be assigned under a preneed contract must have an insurable interest in the life of the preneed contract beneficiary.

(2) If the value of the assignment exceeds the price of the preneed contract services or merchandise, or both, at the time of the death of the preneed contract beneficiary, based on the general provider's general price list in force in accordance with the regulations of the federal trade commission, the excess amounts shall be paid to the beneficiary under the policy or, if none, to the estate of the preneed contract beneficiary.

**Source: L. 95:** Entire article R&RE, p. 1043, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-111 as it existed prior to 1995.

**10-15-112. Rules.** The commissioner may, after notice and hearing as provided in article 4 of title 24, C.R.S., promulgate such rules as may be reasonably necessary for the effective administration of and not inconsistent with the provisions of this article.

**Source: L. 95:** Entire article R&RE, p. 1043, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-112 as it existed prior to 1995.

**10-15-113. Applicability of administrative procedure act.** All procedures for the issuance, suspension, or revocation of licenses shall be pursuant to sections 24-4-104 to 24-4-107, C.R.S., except where inconsistent with the provisions of this article. Any final action with respect to the issuance, suspension, or revocation of licenses shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source: L. 95:** Entire article R&RE, p. 1043, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-113 as it existed prior to 1995.



**10-15-114. Investigations - actions against licensees.** (1) The commissioner may impose an administrative fine not to exceed one thousand dollars for each separate offense; may issue a letter of admonition; may place a contract seller on probation under the commissioner's close supervision on such terms and for such time as the commissioner deems appropriate; and may refuse to renew, may revoke, or may suspend the license of any contract seller if, after an investigation and after notice and a hearing pursuant to the provision of section 24-4-104, C.R.S., the commissioner determines that the contract seller has:

(a) Failed to comply with or has violated any provision of this article or any regulation or order lawfully made pursuant to and within the authority of this article; or

(b) Used false or misleading advertising or made any false or misleading statement or concealment in the contract seller's application for licensure; or

(c) Employed any device, scheme, or artifice which results in defrauding a contract buyer; or

(d) Disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any contract buyer which are subject to regulation pursuant to this article; or

(e) Committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.; or

(f) Been convicted of, or any officer, director, or controlling shareholder has been convicted of, a crime involving fraud or misappropriation or misuse of funds; or

(g) Failed to provide appropriate records requested by the commissioner as part of an investigation of a complaint filed with the commissioner.

**Source: L. 95:** Entire article R&RE, p. 1043, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-114 as it existed prior to 1995.

#### ANNOTATION

**Three-month suspension was not an abuse of discretion by the division** where the seller of insurance-funded pre-need funeral contracts engaged in selling such contracts on forms not approved by the division, continued to sell such contract after being advised by the division that such contracts were not approved, and failed to specify in the contracts the purchase price for funeral goods and services, all of which violate statutory provisions governing the sale of pre-need funeral contracts. *Guardian Plans v. Div. of Insurance*, 793 P.2d 615 (Colo. App. 1990).

**Division was not equitably estopped from suspending license of pre-need funeral contract**

seller who engaged in selling insurance-funded pre-need contracts in violation of statutes governing the sale of such contracts. Even though the division initially approved such contracts, it did so without sufficient information to render knowing approval of the seller's operation for selling life insurance or annuity funded contracts, and reliance by the seller on the division's action was, therefore, not reasonable. *Guardian Plans v. Div. of Insurance*, 793 P.2d 615 (Colo. App. 1990).

**10-15-115. Injunctions - cease-and-desist orders.** (1) Whenever the commissioner has reasonable cause to believe that any person is violating any provision of this article or any rule or order promulgated pursuant to this article, the commissioner may:

(a) In the name of the people of the state of Colorado, through the attorney general, apply for an injunction in any court of competent jurisdiction to perpetually enjoin such person from committing any act prohibited by this article; or

(b) After notice and hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S., issue an order to cease and desist the act or acts violating any provision of this article. A copy of the cease-and-desist order shall be furnished to each party.

**Source: L. 95:** Entire article R&RE, p. 1044, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-115 as it existed prior to 1995.

**10-15-116. Surrender of license.** Any contract seller may surrender such contract seller's license by delivering it to the commissioner with written notice of its surrender, but such surrender shall not affect the contract seller's civil or criminal liability for acts committed prior thereto.

**Source: L. 95:** Entire article R&RE, p. 1044, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-116 as it existed prior to 1995.

**10-15-117. Reinstatement of license.** The commissioner may reinstate a suspended license or issue a new license to a person whose license has been revoked if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue such license and the violations of this article which preceded the suspension or revocation of the license have been corrected.

**Source: L. 95:** Entire article R&RE, p. 1045, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-117 as it existed prior to 1995.

**10-15-118. Violation.** (1) Any person who violates any provision of this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who violates the trust fund provisions of this article or any other misappropriation of funds commits theft pursuant to section 18-4-401, C.R.S.

(2) The commissioner may apply to a court of competent jurisdiction for the appointment of a receiver if the commissioner determines that such appointment is necessary to protect the interests of the contract buyers.

**Source: L. 95:** Entire article R&RE, p. 1045, § 1, effective May 25. **L. 2002:** (1) amended, p. 1468, § 28, effective October 1.

**Editor's note:** This section is similar to former § 10-15-118 as it existed prior to 1995.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

## ANNOTATION

**Due process requires that terms of penal statute be explicit.** The terms of a penal statute creating a new offense, such as this section, must be sufficiently explicit to inform those who are subject to its provisions, and what conduct

on their part will render them liable to its penalties. *Memorial Trusts, Inc. v. Beery*, 144 Colo. 448, 356 P.2d 884 (1960) (decided prior to L. 61, p. 476, § 16, the earliest source of this section).

**10-15-119. Immunity from prosecution.** (1) If any person asks to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, and, notwithstanding such request, the commissioner directs such person to give such testimony or produce such evidence, such person shall nonetheless comply with such direction but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person testifies or produces evidence pursuant thereto; and no testimony so given or evidence so produced shall be received against such person upon any criminal action, investigation, or proceeding. However, no person who has filed a waiver pursuant to subsection (3) of this section shall be immune from prosecution on account of testimony given or evidence produced.

(2) No person so testifying shall be exempt from prosecution or punishment for any



perjury in the first degree committed by the person while so testifying, and the testimony or evidence so given or produced shall be admissible against the person upon any criminal action, investigation, or proceeding concerning such perjury; nor shall the person be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the laws of this state.

(3) Any person may execute, acknowledge, and file in the office of the commissioner a statement expressly waiving his or her immunity or privilege with respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such person or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or other authority, and if it is so received or produced, such individual shall not be entitled to any immunity or privilege on account of such testimony so given or evidence so produced. A waiver executed pursuant to this subsection (3) shall be valid only if it is:

- (a) Entered into voluntarily;
  - (b) Executed by a person with the intellectual capacity to understand the consequences of executing such a waiver;
  - (c) Not executed under threat, coercion, or duress; and
  - (d) (I) Entered into knowingly.
- (II) For purposes of this paragraph (d), a waiver is entered into knowingly when the person executing such waiver has been informed of his or her right to confer with independent legal counsel.

**Source: L. 95:** Entire article R&RE, p. 1045, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-119 as it existed prior to 1995.

**Cross references:** For perjury in the first degree, see § 18-8-502.

**10-15-120. Rule against perpetuities inapplicable.** No trust created pursuant to the provisions of this article, nor any interest therein, shall be deemed to be invalid by any existing law or rule against perpetuities or accumulations or suspension of the power of alienation and such trust and any interest therein may continue for such time as may be necessary to accomplish the purposes for which it may be created.

**Source: L. 95:** Entire article R&RE, p. 1046, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-120 as it existed prior to 1995.

**10-15-121. Other insurance laws applicable.** In addition to the provisions of this article, the provisions of article 1 of this title and parts 9 and 11 of article 3 of this title, except as they are inconsistent with the provisions or purposes of this article, shall apply to any person regulated pursuant to this article.

**Source: L. 95:** Entire article R&RE, p. 1046, § 1, effective May 25.

**Editor's note:** This section is similar to former § 10-15-121 as it existed prior to 1995.

## HEALTH CARE COVERAGE

### ARTICLE 16

#### Health Care Coverage

**Editor's note:** This article was numbered as article 24 of chapter 72, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

**Cross references:** For "The Colorado Care Health Insurance Program", see article 21 of this title; for the "Uniform Unincorporated Nonprofit Association Act", see article 30 of title 7.

## PART 1

SHORT TITLE - DEFINITIONS -  
GENERAL PROVISIONS

		10-16-107.	Rate regulation - rules - approval of policy forms - benefit certificates - evidences of coverage - benefits ratio - disclosures on treatment of intractable pain.
10-16-101.	Short title.		
10-16-102.	Definitions.	10-16-107.1.	False or misleading information - penalties.
10-16-103.	Proposal of mandatory health care coverage provisions.	10-16-107.2.	Filing of health policies - rules.
10-16-103.3.	Commission on mandated health insurance benefits - cash fund - purpose - creation - duties - repeal. (Repealed)	10-16-107.3.	Health insurance policies - plain language required - rules.
10-16-103.5.	Payment of premiums - required term in contract.	10-16-108.	Conversion and continuation privileges.
10-16-104.	Mandatory coverage provisions - definitions.	10-16-108.3.	Continuation privileges - special election period - notice requirements - definitions - repeal. (Repealed)
10-16-104.3.	Dependent health coverage for persons under twenty-five years of age - coverage for students who take medical leave of absence.	10-16-108.5.	Fair marketing standards.
		10-16-109.	Rules and regulations.
		10-16-110.	Fees paid by health coverage entities.
10-16-104.4.	Child-only plans - legislative declaration - open enrollment - reporting requirements - repeal.	10-16-111.	Annual statement and reports - repeal.
10-16-104.5.	Autism - treatment - not mental illness.	10-16-112.	Private utilization review - health care coverage entity responsibility.
10-16-104.6.	Off-label use of cancer drugs.	10-16-113.	Procedure for denial of benefits - internal review - rules.
10-16-104.7.	Substance abuse - court-ordered treatment coverage.	10-16-113.5.	Independent external review of benefit denials - legislative declaration - definitions.
10-16-104.8.	Mental health services coverage - court-ordered.		
10-16-104.9.	Geographic areas for small employers.	10-16-113.7.	Reporting the denial of benefits to division.
10-16-105.	Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic health benefit plans - rules.	10-16-114.	Short title.
		10-16-115.	Definitions.
		10-16-116.	Catastrophic health insurance - coverage.
10-16-105.2.	Small employer health insurance availability program.	10-16-117.	Premium payments - pre-tax - election - reporting requirements.
10-16-105.3.	Health benefit plans - not prohibited.	10-16-118.	Limitations on preexisting condition limitations.
10-16-105.5.	Individual health plans - federally eligible individual - limited guarantee issue.	10-16-119.	Requirements for excess loss insurance used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act".
10-16-106.	Group replacement - extension of benefits.		
10-16-106.3.	Uniform claims - billing codes - electronic claim forms.	10-16-120.	Legislative review of requirements for guaranteed issue of basic and standard health benefit plans. (Repealed)
10-16-106.5.	Prompt payment of claims - legislative declaration.		
10-16-106.7.	Assignment of health insurance benefits.	10-16-121.	Required contract provisions in



- contracts between carriers and providers.
- 10-16-122. Access to prescription drugs.
- 10-16-123. Telemedicine.
- 10-16-124. Prescription information cards - legislative declaration.
- 10-16-125. Reimbursement to nurses.
- 10-16-126. Fee-for-service dental plans.
- 10-16-127. Coinsurance and deductibles.
- 10-16-128. Annual report to general assembly.
- 10-16-129. Health savings accounts.
- 10-16-130. Disclosure of rate increases to public entities - legislative declaration - definitions.
- 10-16-131. Health care reform project - blue ribbon commission for health care reform - repeal. (Repealed)
- 10-16-132. Study of factors driving health care costs in Pueblo county - repeal. (Repealed)
- 10-16-133. Health carrier information disclosure - web site - insurance producer disclosure requirements - legislative declaration.
- 10-16-134. Health care transparency - information required - web site - definition.
- 10-16-135. Health benefit plan information cards - rules - standardization - contents.
- 10-16-136. Wellness and prevention programs - individual and small group health coverage plans - voluntary participation - incentives or rewards - definitions - legislative declaration - repeal.
- 10-16-137. Policy forms - explanation of benefits - standardization of forms - rules.
- 10-16-138. Pathology services - direct billing required.

## PART 2

## SICKNESS AND ACCIDENT INSURANCE

- 10-16-201. Form and content of individual sickness and accident insurance policies.
- 10-16-201.5. Renewability of health benefit plans - modification of health benefit plans.
- 10-16-202. Required provisions in individual sickness and accident policies.
- 10-16-203. Optional provisions in individual sickness and accident insurance policies.
- 10-16-204. Inapplicable or inconsistent

- 10-16-205. Order of certain policy provisions in individual policies of sickness and accident insurance.
- 10-16-206. Third party ownership of individual sickness and accident insurance policies.
- 10-16-207. Requirements of other jurisdictions.
- 10-16-208. Conforming to statute.
- 10-16-209. Application for policy.
- 10-16-210. Notice - waiver.
- 10-16-211. Age limit.
- 10-16-212. Exemption from attachment and execution.
- 10-16-213. Industrial sickness and accident insurance.
- 10-16-214. Group sickness and accident insurance.
- 10-16-215. Blanket sickness and accident insurance.
- 10-16-216. Examinations.
- 10-16-216.5. Hearing procedure and judicial review - violations - penalty.
- 10-16-217. Application of part 1 of this article and part 2.
- 10-16-218. Judicial review.
- 10-16-219. Benefits for care of mental illness in tax supported institutions.
- 10-16-220. Minimum standards for sickness and accident plans.
- 10-16-221. Health care task force - creation - duties - repeal. (Repealed)

## PART 3

NONPROFIT HOSPITAL,  
MEDICAL-SURGICAL, AND HEALTH  
SERVICE CORPORATIONS

- 10-16-301. Legislative declaration.
- 10-16-302. Incorporation and organization - exemptions.
- 10-16-303. Filing of articles of incorporation.
- 10-16-304. Contents of articles.
- 10-16-305. Directors.
- 10-16-306. Contracts - benefits for long-term care insurance.
- 10-16-307. Authority to do business.
- 10-16-308. Automatic extension of certificate.
- 10-16-309. Requirements for certificate of authority.
- 10-16-310. Surplus - guarantee fund deposit - regulations.
- 10-16-311. Group benefits for depositors of banks - benefits for subscribers in public institutions.

- 10-16-312. Contracts with other organizations.
- 10-16-313. Licensing of representatives. (Repealed)
- 10-16-314. Payment for examinations of corporations.
- 10-16-315. Revocation of certificate - appeal.
- 10-16-316. Complaints.
- 10-16-317. Exemption of direct payment methods.
- 10-16-317.5. Assignment of benefits.
- 10-16-318. Prospective reimbursement.
- 10-16-319. Effective date.
- 10-16-320. Investment of funds.
- 10-16-321. Medicare supplement benefit standards.
- 10-16-322. Filing of health policies.
- 10-16-323. Conversion of corporation to mutual insurance company. (Repealed)
- 10-16-324. Conversion of corporation to stock insurance company.

PART 4

HEALTH MAINTENANCE ORGANIZATIONS

- 10-16-401. Establishment of health maintenance organizations.
- 10-16-402. Issuance of certificate of authority - denial.
- 10-16-403. Powers of health maintenance organizations - repeal.
- 10-16-404. Governing body.
- 10-16-405. Fiduciary responsibilities.
- 10-16-406. Evidence of coverage.
- 10-16-407. Information to enrollees.
- 10-16-408. Open enrollment.
- 10-16-409. Complaint system.
- 10-16-410. Investments.
- 10-16-411. Protection against insolvency.
- 10-16-412. Statutory deposit.
- 10-16-413. Prohibited practices.
- 10-16-413.5. Return to home - legislative declaration.
- 10-16-414. Regulation of agents.
- 10-16-415. Powers of insurers and non-profit hospital, medical-surgical, and health service corporations.
- 10-16-416. Examination.
- 10-16-417. Suspension or revocation of certificate of authority.
- 10-16-418. Rehabilitation, liquidation, or conservation of health maintenance organization.
- 10-16-419. Administrative procedures.
- 10-16-420. Penalties and enforcement.
- 10-16-421. Statutory construction and relationship to other laws.
- 10-16-421.5. Acquisition of control of or

- 10-16-422. merger of a health maintenance organization.
- 10-16-423. Filings and reports as public documents.
- 10-16-424. Confidentiality of health information.
- 10-16-425. Executive director's authority to contract.
- 10-16-426. Applicability of provisions.
- 10-16-427. Medicare supplement benefit standards.
- 10-16-428. Contractual relations.
- Prohibition concerning state-funded medical assistance. (Repealed)

PART 5

PREPAID DENTAL CARE PLANS

- 10-16-501. Legislative declaration.
- 10-16-502. Establishment of prepaid dental care plan organizations.
- 10-16-503. Application for certificate of authority.
- 10-16-504. Issuance of certificate of authority.
- 10-16-505. Guarantee fund deposit.
- 10-16-506. Reserve requirement - exception.
- 10-16-507. Enrollee coverage by prepaid dental care plan organizations.
- 10-16-508. Examination of prepaid dental care plan organization.
- 10-16-509. Operational expenses.
- 10-16-510. Suspension or revocation of certificate of authority.
- 10-16-511. Rehabilitation, liquidation, or conservation of prepaid dental care plan organization.
- 10-16-512. Other laws applicable.

PART 6

ACCOUNTABILITY OF INDEPENDENT MEDICAL EXAMINERS TO THEIR PATIENTS

- 10-16-601. Legislative declaration.
- 10-16-602. Definitions.
- 10-16-603. Independent medical examinations - governing standard.
- 10-16-604. Financial interest in future care of patient prohibited.
- 10-16-605. Independence of examiners.
- 10-16-606. Applicability.

PART 7

CONSUMER PROTECTION STANDARDS ACT FOR THE OPERATION OF MANAGED CARE PLANS

- 10-16-701. Short title.



10-16-702. Legislative declaration.  
 10-16-703. Applicability.  
 10-16-704. Network adequacy - rules - legislative declaration.  
 10-16-705. Requirements for carriers and participating providers.  
 10-16-706. Intermediaries.  
 10-16-707. Enforcement.  
 10-16-708. Rule-making authority of commissioner.  
 10-16-709. Evaluation - nonparticipating health care providers - legislative declaration - rules.

## PART 8

## TASK FORCE TO EVALUATE HEALTH CARE NEEDS FOR COLORADO

10-16-801. (Repealed)

## PART 9

## MULTIPLE EMPLOYER WELFARE ARRANGEMENT PILOT PROGRAM

10-16-901 to  
 10-16-910. (Repealed)

## PART 10

## HEALTH CARE COVERAGE COOPERATIVES

10-16-1001. Legislative declaration.

10-16-1002. Definitions.  
 10-16-1003. Privacy of health information.  
 10-16-1004. Health care coverage cooperatives - establishment - fees.  
 10-16-1005. Issuance of certificate of authority by commissioner for cooperative to purchase health care coverage.  
 10-16-1006. Authority to deny application for, revoke, or suspend certificate of authority.  
 10-16-1007. Prohibition on cooperatives transacting insurance business.  
 10-16-1008. Administrative structure of cooperatives - board of directors - officers - employees.  
 10-16-1009. Powers, duties, and responsibilities of cooperatives.  
 10-16-1010. Marketing requirements of cooperatives.  
 10-16-1011. Requirements for waived health care coverage cooperatives - rules.  
 10-16-1012. Application of rating factors inside a waived cooperative.  
 10-16-1013. Violations of article by persons involved with operations of cooperatives - enforcement - penalties.  
 10-16-1014. Technical assistance to authorized cooperatives from division of insurance.  
 10-16-1015. Health care cooperatives - rule-making authority.

## PART 1

## SHORT TITLE - DEFINITIONS - GENERAL PROVISIONS

**10-16-101. Short title.** This article shall be known and may be cited as the “Colorado Health Care Coverage Act”.

**Source:** L. 92: Entire article R&RE, p. 1617, § 1, effective July 1.

## ANNOTATION

**Law reviews.** For article, “H.B. 94-1210: Health Insurance Reform”, see 24 Colo. Law: 2331 (1994). For article, “Managed Health Care

in Colorado: Current Consumer Protection Standards”, see 27 Colo. Law. 91 (July 1998).

**10-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Actuarial certification” means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of part 10 of this article, based upon the person’s examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) “Affiliate” or “affiliated” means any entity or person that directly or indirectly,

through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(2.5) “Affiliation period” means a period of time not to exceed two months (three months for late enrollees) during which a health maintenance organization does not collect premium and coverage issued would not become effective.

(3) “Base premium rate” means, as to a rating period, the lowest premium rate charged or that could have been charged by the small employer carrier to small employers with similar case characteristics for health benefit plans subject to state insurance regulation.

(4) “Basic health benefit plan” means a health benefit plan developed pursuant to section 10-16-105 (7.2).

(5) “Basic health care services” means health care services that an enrolled population of a health maintenance organization organized pursuant to the provisions of part 4 of this article might reasonably require in order to maintain good health, including as a minimum, emergency care, inpatient and outpatient hospital services, physician services, outpatient medical services, and laboratory and X-ray services.

(5.3) “Benefits ratio” means the ratio of the value of the actual benefits, not including dividends, to the value of the actual premiums, not reduced by dividends, over the entire period for which rates are computed to provide coverage. “Benefits ratio” is also known as “targeted loss ratio”.

(5.5) “Bona fide association” means, with respect to health insurance coverage offered in Colorado, an association which:

- (a) Has been actively in existence for at least five years;
- (b) Has been formed and maintained in good faith for purposes other than obtaining insurance and does not condition membership on the purchase of association-sponsored insurance;
- (c) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee) and clearly so states in all membership and application materials;
- (d) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member) and clearly so states in all marketing and application materials;
- (e) Does not make health insurance coverage offered through the association available other than in connection with a member of the association and clearly so states in all marketing and application materials; and
- (f) Provides and annually updates information necessary for the commissioner to determine whether or not an association meets the definition of a bona fide association before qualifying as a bona fide association for the purposes of this article.

(5.6) “Bona fide volunteer”:

- (a) Has the meaning set forth in section 31-30-1202, C.R.S.;
- (b) Means any volunteer member of a not-for-profit nongovernmental entity that is organized to provide firefighting services, emergency medical services, or ambulance services; and
- (c) Means any volunteer member of a rescue unit as defined in section 25-3.5-103, C.R.S.

(6) (a) “Business group of one” means, for purposes of qualification, an individual, a sole proprietor, or a single full-time employee of a subchapter S corporation, C corporation, nonprofit corporation, limited liability company, or partnership who works twenty-four hours or more a week on a permanent basis and who has carried on significant business activity for a period of at least one year prior to application for coverage, has gross income as indicated on federal internal revenue service forms 1040, schedule C, F, or SE, or other forms recognized by the federal internal revenue service for income reporting purposes which generated gross income from which that individual, sole proprietor, or single full-time employee has derived at least a substantial part of such individual’s income for one year out of the most recent consecutive three-year period. For the purposes of this subsection (6), “substantial part of such individual’s income” means income derived from



business activities of the business group of one that are sufficient to pay for annual health insurance premiums for the business group of one.

(b) "Business group of one" includes a full-time household employee who works twenty-four hours or more a week on a permanent basis as a household employee, if that employee has derived at least a substantial part of such employee's earned income for one year out of the preceding three-year period from household employment, and if the employee's employer, on at least fifty percent of the days in a normal work week during the preceding calendar quarter, employed at least one household employee.

(c) For purposes of determining whether an applicant meets the requirements of the definition set forth in this subsection (6), a carrier may require an applicant to submit to the carrier any of the following forms of documentation that is applicable to the applicant's current business or employment:

(I) Employment-related tax and withholding information, including, but not limited to, a federal internal revenue service form 1099; and

(II) Relevant portions of federal and state tax returns or a certification by an attorney or certified public accountant that federal and state tax returns have been filed as a business.

(d) For purposes of determining whether an applicant meets the requirements of twenty-four hours or more per week on a permanent basis as set forth in this subsection (6), the commissioner shall promulgate a rule, within existing resources, to define what types of documentation may be requested by a carrier to substantiate this requirement.

(7) "Capped employees" means the number of employees and dependents with health problems at the time the plan of which such employees are a part was issued who are in small groups covered by the carrier where the small employer group would have failed the carrier's normal and actuarially-based small group underwriting criteria specifically because of the health status of those employees with health problems at the time the plan was issued, but who were issued basic or standard health benefit plan coverage as required under section 10-16-105 (7.3) (c) regardless of the health status of the group. "Capped employees" only includes employees and dependents covered by a small employer group health benefit plan of a carrier at the time the carrier proposes to suspend its duty to issue basic or standard health benefit plan coverage as required under section 10-16-105 (7.3) (c).

(8) "Carrier" means any entity that provides health coverage in this state including a franchise insurance plan, a fraternal benefit society, a health maintenance organization, a nonprofit hospital and health service corporation, a sickness and accident insurance company, and any other entity providing a plan of health insurance or health benefits subject to the insurance laws and regulations of Colorado.

(9) (Deleted by amendment, L. 97, p. 630, § 3, effective May 1, 1997.)

(10) (a) "Case characteristics" means demographic characteristics of a small employer that are considered by the carrier in the determination of premium rates for the small employer.

(b) "Case characteristics" are limited to the following demographic characteristics:

(I) The age of covered individuals according to the following brackets:

(A) For children who are dependents, a single bracket from newborn to nineteen years of age, unless the child is a full-time student covered as a dependent, in which case the bracket is newborn up to twenty-four years of age;

(B) For adults and emancipated minors, age brackets in five-year intervals;

(II) Geographic location of the policyholder as determined by rule of the commissioner pursuant to section 10-16-104.9;

(III) Family size, including the following size categories only:

(A) One adult;

(B) One adult and any children;

(C) Two adults; and

(D) Two adults and any children;

(IV) Smoking status; and

(V) (Deleted by amendment, L. 2007, p. 1752, § 1, effective January 1, 2009.)

(VI) Standard industrial classification.

(VII) (Deleted by amendment, L. 2007, p. 1752, § 1, effective January 1, 2009.)

(c) Effective September 1, 2003, "case characteristics" does not include duration of coverage or any other characteristic not specifically described in paragraph (b) of this subsection (10).

(10.3) "Child-only plan" means a health benefit plan that is issued on or after April 29, 2011, and that provides coverage to an individual under nineteen years of age. A "child-only plan" does not include coverage provided to a dependent under an individual or group health benefit plan.

(10.5) "Church plan" shall have the same meaning as set forth in 29 U.S.C. sec. 1002 (33) of the federal "Employee Retirement Income Security Act of 1974".

(11) (Deleted by amendment, L. 2004, p. 980, § 3, effective August 4, 2004.)

(12) "Commissioner" means the commissioner of insurance.

(13) "Control" has the same meaning as set forth in section 10-3-801 (3).

(13.5) "Covered person" means a person entitled to receive benefits or services under a health coverage plan.

(13.7) "Creditable coverage" means benefits or coverage provided under:

(a) Medicare, medicaid, or the children's basic health plan established pursuant to article 8 of title 25.5, C.R.S.;

(b) An employee welfare benefit plan or group health insurance or health benefit plan;

(c) An individual health benefit plan;

(d) A state health benefits risk pool (including but not limited to CoverColorado); or

(e) Chapter 55 of title 10 of the United States code, a medical care program of the federal Indian health service or of a tribal organization, a health plan offered under chapter 89 of title 5, United States code, a public health plan, or a health benefit plan under section 5 (e) of the federal "Peace Corps Act" (22 U.S.C. Sec. 2504 (e)).

(14) "Dependent" means a spouse, an unmarried child under nineteen years of age, an unmarried child who is a full-time student under twenty-four years of age and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent. "Dependent" shall include a designated beneficiary, as defined in section 15-22-103 (1), C.R.S., if an employer elects to cover a designated beneficiary as a dependent.

(15) (a) "Eligible employee" means an employee who has a regular work week of twenty-four or more hours and includes a sole proprietor and a partner of a partnership if the sole proprietor or partner is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a temporary or substitute basis.

(b) Notwithstanding any provision of law to the contrary, an eligible employee of a small employer who could also be considered a dependent of the small employer shall receive taxable income from such small employer in an amount equivalent to minimum wage for working twenty-four hours per week on a permanent basis in order for the employer group to be considered a business group of two or more.

(c) Nothing in this subsection (15) is intended to limit the employer's traditional ability to set valid and acceptable standards for employee eligibility based on the terms and conditions of employment, including a minimum weekly work requirement in excess of twenty-four hours and eligibility based upon salaried versus hourly workers and management versus nonmanagement employees.

(15.5) "Emergency service provider" means a local government, or an authority formed by two or more local governments, that provides firefighting and fire prevention services, emergency medical services, ambulance services, or search and rescue services, or a not-for-profit nongovernmental entity organized for the purpose of providing any such services, through the use of bona fide volunteers.

(16) "Enrollee" means an individual who is or has been enrolled in a health maintenance organization or an individual who is or has been enrolled in an individual or group prepaid dental care plan as a principal subscriber together with such individual's dependents who are entitled to dental care services under the plan solely because of their status as dependents of the principal subscriber.

(17) "Enrollee coverage" means any certificate or contract issued pursuant to section 10-16-507 to an enrollee setting out the dental coverage to which such enrollee is entitled.



(18) "Established geographic service area" means the entire state of Colorado or, for plans that do not cover the entire state, any county within which the carrier is authorized to have arrangements established with providers to provide services.

(19) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee by a health maintenance organization setting out the coverage to which the enrollee is or was entitled.

(20) "Executive director" means the executive director of the department of public health and environment.

(20.5) "Government plan" shall have the same meaning as set forth in 29 U.S.C. sec. 1002 (32) of the federal "Employee Retirement Income Security Act of 1974", and as in any federal governmental plan.

(21) (a) "Health benefit plan" means any hospital or medical expense policy or certificate, hospital or medical service corporation contract, or health maintenance organization subscriber contract or any other similar health contract subject to the jurisdiction of the commissioner available for use, offered, or sold in Colorado.

(b) "Health benefit plan" does not include: Accident only; credit; dental; vision; medicare supplement; benefits for long-term care, home health care, community-based care, or any combination thereof; disability income insurance; liability insurance including general liability insurance and automobile liability insurance; coverage for on-site medical clinics; coverage issued as a supplement to liability insurance, workers' compensation or similar insurance; or automobile medical payment insurance. The term also excludes specified disease, hospital confinement indemnity, or limited benefit health insurance if such types of coverage do not provide coordination of benefits and are provided under separate policies or certificates. Solely with respect to the provisions of section 10-16-118 (1) (b) concerning creditable coverage for individual policies, the term excludes individual short-term limited duration health insurance policies issued after January 1, 1999. This means such policies do not have to recognize creditable coverage. For the purpose of this paragraph (b), "short-term limited duration health insurance policy" means a nonrenewable individual health benefit plan with a specified duration of not more than six months that meets the following requirements:

(I) The short-term limited duration health insurance policy is issued only to individuals who have not had more than one such policy providing the same or similar nonrenewable coverage from any carrier within the past twelve months and so states in all marketing materials, application forms, and policy forms. An applicant shall be deemed to be eligible for coverage if a short-term carrier includes in its application form the following: "Have you or any other person to be insured been covered under two or more nonrenewable short-term policies during the past twelve months? If "yes", then this policy cannot be issued. You must wait six months from the date of your last such policy to apply for a short-term policy."

(II) The short-term limited duration health insurance policy contains the following disclosure in ten-point or larger bold-faced type in all marketing materials, application forms, and policy forms: "This policy does not provide portability of prior coverage. As a result, any injury, sickness, or pregnancy for which you have incurred charges, received medical treatment, consulted a health care professional, or taken prescription drugs within twelve months of the effective date of this policy will not be covered under this policy."

(22) "Health care services" means any services included in the furnishing to any individual of medical, mental, dental, or optometric care or hospitalization or nursing home care or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human physical or mental illness or injury. "Health care services" includes the rendering of such services through the use of telemedicine.

(22.5) "Health coverage plan" means a policy, contract, certificate, or agreement entered into by, offered to, or issued by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(23) "Health maintenance organization" means any person who:

(a) Provides, either directly or through contractual or other arrangements with others, health care services to enrollees; and

(b) Provides, either directly or through contractual or other arrangements with other persons, health care services, including as a minimum, but not limited to, emergency care, inpatient and outpatient hospital services, physician services, outpatient medical services, and laboratory and X-ray services; and

(c) Is responsible for the availability, accessibility, and quality of the health care services provided or arranged.

(24) "Health status" means the determination by a carrier of the past, present, or expected risk of an individual or the employer due to the health conditions of the employees of the employer.

(24.5) "Health status-related factor" means any of the following factors: Health status; medical condition, including both physical and mental illnesses; claims experience; receipt of health care; medical history; genetic information; evidence of insurability including conditions arising out of acts of domestic violence; and disability.

(24.7) "Hearing aid" means amplification technology that optimizes audibility and listening skills in the environments commonly experienced by the patient, including a wearable instrument or device designed to aid or compensate for impaired human hearing. "Hearing aid" shall include any parts or ear molds.

(25) "Index rate" means as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(25.5) "Intermediary" means a person authorized by health care providers to negotiate and execute provider contracts with carriers on behalf of such providers.

(26) "Late enrollee" means an eligible employee or dependent who requests enrollment in a group health benefit plan following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, if such initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if:

(a) The individual:

(I) Was covered under other creditable coverage at the time of the initial enrollment period and, if required by the carrier or issuer, the employee stated at the time of initial enrollment that this was the reason for declining enrollment;

(II) Lost coverage under the other creditable coverage as a result of termination of employment or eligibility, reduction in the number of hours of employment, the involuntary termination of the creditable coverage, death of a spouse, legal separation or divorce, or employer contributions towards such coverage was terminated; and

(III) Requests enrollment within thirty days after termination of the other creditable coverage; or

(b) The individual is employed by an employer that offers multiple health benefit plans and elects a different plan during an open enrollment period; or

(c) A court has ordered that coverage be provided for a dependent under a covered employee's health benefit plan and the request for enrollment is made within thirty days after issuance of such court order; or

(d) (I) A person becomes a dependent of a covered person through marriage, birth, adoption, or placement for adoption and requests enrollment no later than thirty days after becoming such a dependent. In such case, coverage shall commence on the date the person becomes a dependent if a request for enrollment is received in a timely fashion before such date.

(II) A person who becomes a dependent of a covered person through a designated beneficiary agreement pursuant to article 22 of title 15, C.R.S., requests enrollment no later than thirty days after becoming such a dependent, and the employer of the covered person elects to cover designated beneficiaries as dependents. In such case, coverage shall commence on the date the person becomes a dependent if a request for enrollment is received in a timely fashion before said date.

(e) The parent or legal guardian of the dependent disenrolls the dependent from, or the dependent otherwise becomes ineligible for, the children's basic health plan, established pursuant to article 8 of title 25.5, C.R.S., and requests enrollment of the dependent no later than ninety days after the disenrollment.



(f) The employee or dependent is enrolled in the medical assistance program established under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., is terminated from the program as a result of loss of eligibility for the program, and requests coverage under the group health benefit plan within sixty days after the date of termination from the program.

(g) The employee or dependent becomes eligible for premium assistance under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., or the children's basic health plan established in article 8 of title 25.5, C.R.S., including under any waiver or demonstration project conducted under or in relation to such act or plan, and the employee or dependent requests coverage under the group health benefit plan within sixty days after the date the employee or dependent is determined to be eligible for such assistance.

(26.3) "Licensed health care provider" shall have the same meaning as in section 10-4-601.

(26.4) "Local government" means any city, county, city and county, special district, or other political subdivision of this state.

(26.5) "Managed care plan" means a policy, contract, certificate, or agreement offered by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services through the covered person's use of health care providers managed by, owned by, under contract with, or employed by the carrier because the carrier either requires the use of or creates incentives, including financial incentives, for the covered person's use of those providers.

(27) "Mandatory coverage provision" means any law requiring the coverage of a health care service or benefit. It does not include any law requiring the reimbursement, utilization, or consideration of a specific category of licensed health care practitioner if such reimbursement, utilization, or consideration does not exceed the amount authorized by an insurer in its policies and contracts pursuant to section 10-16-104 (7) (a).

(27.3) "Minor child" means any person under the age of eighteen years.

(27.5) "Network" means a group of participating providers providing services to a managed care plan. For the purposes of part 7 of this article, any subdivision or subgrouping of a network is considered a network if covered individuals are restricted to the subdivision or subgrouping for covered benefits under the managed care plan.

(28) "New business premium rate" means, as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same of similar coverage.

(28.5) "Participating provider" means a provider that, under a contract with a carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the carrier.

(28.7) "Patient with diabetes" means a person with elevated blood glucose levels who has been diagnosed as having diabetes by an appropriately licensed health care professional.

(29) "Person" means any individual, partnership, association, trust, or corporation and includes but is not limited to any hospital licensed or certified in this state, independent practice association of physicians, or professional service corporation for the practice of medicine.

(29.5) "Pharmacy benefit management firm" means any entity doing business in this state that contracts to administer or manage prescription drug benefits on behalf of any carrier that provides prescription drug benefits to residents of this state.

(30) "Policy of sickness and accident insurance" means any policy or contract of insurance against loss or expense resulting from the sickness of the insured, or from the bodily injury or death of the insured by accident, or both.

(31) "Premium" means all moneys paid by a small employer and eligible employees as a condition of receiving coverage from a carrier, including any fees or other contributions associated with the health benefit plan.

(32) "Prepaid dental care plan" means any contractual arrangement through an entity organized pursuant to the provisions of part 5 of this article to provide, either directly or through arrangements with others, dental care services to enrollees on a fixed prepayment

basis or as a benefit of such enrollees' participation or membership in any other contract, agreement, or group.

(33) "Prepaid dental care plan organization" means any person who undertakes to conduct one or more prepaid dental care plans providing only dental care services.

(34) "Prepaid dental care services" means services included in the practice of dentistry as defined in article 35 of title 12, C.R.S.

(35) "Producer" means a person licensed by the division who solicits, negotiates, effects, procures, delivers, renews, continues, services, or binds health benefit plans and is licensed to conduct these activities in Colorado.

(36) "Provider" means any physician, dentist, optometrist, anesthesiologist, hospital, X ray, laboratory and ambulance services, or other person who is licensed or otherwise authorized in this state to furnish health care services.

(36.3) "Qualifying event" includes birth, adoption, marriage, dissolution of marriage, loss of employer-sponsored insurance, loss of eligibility under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., loss of eligibility under the children's basic health plan, article 8 of title 25.5, C.R.S., entry of a valid court or administrative order mandating the child be covered, or involuntary loss of other existing coverage for any reason other than fraud, misrepresentation, or failure to pay a premium.

(36.5) "Rate increase" means an increase in the current rate.

(37) (Deleted by amendment, L. 97, p. 630, § 3, effective May 1, 1997.)

(38) "Rating period" means the calendar period for which premium rates established by a carrier are assumed to be in effect.

(39) "Restricted network provision" means any provision of an individual or group health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(40) (a) "Small employer" means any person, firm, corporation, partnership, or association that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, except as provided in section 10-16-105 (12), employed no more than fifty eligible employees, the majority of whom were employed within this state and that was not formed primarily for the purpose of purchasing insurance. "Small employer" includes a business group of one. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one employer.

(b) In order to be classified as a small employer with more than one employee when only one employee enrolls in the small employer's health benefit plan, the small employer shall submit to the small employer carrier the two most recent quarterly employment and tax statements substantiating that the employer had two or more eligible employees. Such small employer group shall also meet the participation requirements of the small employer carrier.

(41) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.

(42) "Small group sickness and accident insurance", "small group plan", and "small group policy" mean that form of group sickness and accident insurance issued by an entity subject to part 2 of this article, that form of group service or indemnity type contract issued by an entity organized pursuant to the provisions of part 3 of this article, or that form of policy issued by an entity organized pursuant to the provisions of part 4 of this article which provides coverage to small employers located in Colorado. These terms include a bona fide association plan if such plan provides coverage to one or more eligible employees of a small employer in Colorado.

(43) "Standard health benefit plan" means a health benefit plan developed pursuant to section 10-16-105 (7.2).

(43.5) "Standing referral" means a referral by the covered person's primary care provider to a specialist or specialized treatment center participating in the carrier's network for ongoing treatment of a covered person.

(43.7) "Targeted loss ratio" means the ratio of expected policy benefits over the entire future period for which the proposed rates are expected to provide coverage to the expected



earned premium over the same period. The anticipated loss ratio shall be calculated on an incurred basis as the ratio of expected incurred losses to expected earned premium.

(44) “Uncovered expenditures” means the costs of those health care services which are covered under the health maintenance organization’s health care plans, but which are not guaranteed, insured, or assumed by a person or organization other than the health maintenance organization, or for which a provider has not agreed to hold enrollees harmless if the provider is not paid by the health maintenance organization.

(45) “Waiting period” means, with respect to a group health benefit plan and an individual that is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual, as determined by the plan sponsor, before the individual is eligible to be covered for benefits under the terms of the plan.

**Source:** **L. 92:** Entire article R&RE, p. 1617, § 1, effective July 1. **L. 93:** (3) amended, p. 200, § 1, effective March 31. **L. 94:** (1) and (40) amended and (2) to (11), (13) to (15), (18), (21), (24) to (26), (28), (31), (35), (37) to (39), (41), and (42) added, p. 1896, § 6, effective July 1. **L. 96:** (6) amended, p. 392, § 1, effective July 1; (13.5), (22.5), (25.5), and (26.5) added, p. 568, § 2, effective July 1; (22.5) and (26.5) added, p. 729, § 1, effective July 1. **L. 97:** (10)(b)(II) amended, p. 117, § 1, effective March 24; (2.5), (5.5), (13.7), (24.5), and (45) added and (9), (21), (26), (37), and (43) amended, p. 630, § 3, effective May 1; (27.5) and (28.5) added, p. 1324, § 1, effective July 1. **L. 98:** (21)(b) amended, p. 373, § 1, effective April 21; (28.7) added, p. 329, § 1, effective July 1. **L. 99:** (23)(a) amended, p. 84, § 5, effective July 1; (43.5) added, p. 319, § 3, effective July 1; (6) amended, p. 225, § 1, effective August 4. **L. 2001:** (10.5) and (20.5) added and (13.7)(d) amended, pp. 1048, 1051, §§ 31, 37, effective July 1; (6)(a), IP(10)(b), and (15) amended, p. 811, § 2, effective January 1, 2002; (22) amended and (26.3) added, p. 1153, § 2, effective January 1, 2002; (29.5) added, p. 1230, § 1, effective January 1, 2002. **L. 2002:** (6)(d) added and (10)(b)(II) and (40) amended, pp. 1291, 1290, §§ 2, 1, effective January 1, 2003; (6)(d) added and (40) amended, p. 1283, §§ 2, 1, effective January 1, 2003; (11)(a)(II) and (11)(a)(III) amended and (11)(a)(IV) added, p. 331, § 2, effective January 1, 2003. **L. 2003:** (10)(b)(II) amended, p. 1988, § 20, effective May 22; (10)(b)(IV), (10)(b)(V), (10)(b)(VI), (10)(b)(VII), and (15)(c) added and (10)(c) amended, p. 1774, §§ 7, 8, 6, effective July 1. **L. 2004:** (1), (11), and (40)(a) amended, p. 980, § 3, effective August 4; (7) amended, p. 1190, § 16, effective August 4. **L. 2005:** (42) and (43) amended, p. 762, § 14, effective June 1. **L. 2007:** (13.7)(a) amended and (26)(e) added, p. 470, §§ 1, 2, effective July 1; (10)(b)(IV), (10)(b)(V), (10)(b)(VI), and (10)(b)(VII) amended, p. 1752, § 1, effective January 1, 2009. **L. 2008:** (5.3), (36.5), and (43.7) added, p. 2249, § 3, effective July 1; (5.6), (15.5), and (26.4) added, p. 578, § 1, effective August 5; (24.7) and (27.3) added, p. 2006, § 2, effective January 1, 2009. **L. 2009:** (14) and (26)(d) amended, (HB 09-1260), ch. 107, p. 439, § 3, effective July 1; (26)(e) amended and (26)(f) and (26)(g) added, (HB 09-1338), ch. 353, p. 1843, § 3, effective July 1. **L. 2010:** (26.3) amended, (HB 10-1220), ch. 197, p. 856, § 22, effective July 1. **L. 2011:** (10.3) and (36.3) added, (SB 11-128), ch. 133, p. 467, § 2, effective April 29.

**Editor’s note:** (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

(2) The provisions of this section, including the amendments made by House Bill 94-1210, were renumbered in 1994 to conform to C.R.S. numbering format.

(3) Amendments to subsection (22.5) by House Bill 96-1082 and House Bill 96-1216 were harmonized.

(4) Amendments to subsection (40) by House Bill 02-1003 and House Bill 02-1013 were harmonized.

**Cross references:** For the legislative declaration contained in the 1996 act enacting subsections (13.5), (22.5), (25.5), and (26.5), see section 1 of chapter 122, Session Laws of Colorado 1996. For the legislative declaration contained in the 1997 act enacting subsections (2.5), (5.5), (13.7), (24.5), and (45) and amending subsections (9), (21), (26), (37), and (43), see section 1 of chapter 154, Session Laws of Colorado 1997. For the legislative declaration contained in the 1999 act enacting subsection

(43.5), see section 1 of chapter 111, Session Laws of Colorado 1999. For the legislative declaration contained in the 2001 act amending subsection (22) and enacting subsection (26.3), see section 1 of chapter 300, Session Laws of Colorado 2001. For the legislative declaration contained in the 2002 act amending subsections (11)(a)(II) and (11)(a)(III) and enacting subsection (11)(a)(IV), see section 1 of chapter 117, Session Laws of Colorado 2002. In 2008, subsections (5.3), (36.5), and (43.7) were enacted by the "Fair Accountable Insurance Rates Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008. For the legislative declaration in the 2011 act adding subsections (10.3) and (36.3), see section 1 of chapter 133, Session Laws of Colorado 2011.

### ANNOTATION

**Annotator's note.** Since § 10-16-102 is similar to § 10-8-101 as it existed prior to the 1992 repeal of part 1 of article 8 of this title, a relevant case construing that provision has been included in the annotations to this section.

**There exists a presumption that a violent and unexplained death** from external causes is accidental. *Simonton v. Continental Cas. Co.*, 32 Colo. App. 138, 507 P.2d 1132 (1973).

**It is a question of fact for a jury.** The question of whether decedent's drug dependency was a "sickness or disease" so as not to fall under decedent's accident insurance policy was a question of fact for the jury. *Simonton v. Continental Cas. Co.* 32 Colo. App. 138, 507 P.2d 1132 (1973).

**Jury may find death from drug dependency is an accident.** Where the jury determined that the drug dependency of the deceased was not a sickness or disease and that death was therefore caused by accident, this conclusion is supported by the evidence which demonstrated that decedent was using drugs for treatment of pain caused by pancreatitis, had been using drugs in this way for approximately 10 years, and, although there were instances when abuse of the drugs did result in decedent's intoxication, the evidence indicates these were only isolated incidents. *Simonton v. Continental Cas. Co.*, 32 Colo. App. 138, 507 P.2d 1132 (1973).

**10-16-103. Proposal of mandatory health care coverage provisions.** (1) Every person or organization which seeks legislative action which would mandate a health coverage or offering of a health coverage by an insurance carrier, nonprofit hospital and health care service corporation, health maintenance organization, or prepaid dental care plan organization as a component of individual or group policies shall submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage, including the efficacy of the treatment or service proposed.

(2) Guidelines for assessing the impact of proposed mandated or mandatorily offered health coverage to the extent that information is available shall include, but not be limited to, the following:

(a) The social impact of such mandatory coverage, including, but not limited to, the following:

(I) The extent to which the treatment or service is generally utilized by a significant portion of the population;

(II) The extent to which the insurance coverage is already generally available to the general population;

(III) The extent to which the lack of coverage results in persons avoiding necessary health care treatments;

(IV) The extent to which the lack of coverage results in unreasonable financial hardship;

(V) The level of public demand for the treatment or service, including the public level of demand for insurance coverage of such treatment or service;

(VI) The level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts;

(b) The financial impact of such mandatory coverage, including, but not limited to, the following:

(I) The extent to which the coverage will increase or decrease the cost of the treatment or service;

(II) The extent to which the coverage will increase the appropriate use of the treatment or service;



(III) The extent to which the mandated treatment or service will be a substitute for more expensive treatment or coverage;

(IV) The extent to which the coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders;

(V) The impact of this coverage on the total cost of health care in Colorado.

**Source:** L. 92: Entire article R&RE, p. 1620, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-125 as it existed prior to 1992.

**10-16-103.3. Commission on mandated health insurance benefits - cash fund - purpose - creation - duties - repeal. (Repealed)**

**Source:** L. 2003: Entire section added, p. 1791, § 1, effective May 20. L. 2005: (9) amended, p. 1026, § 1, effective June 2. L. 2007: (1)(b) amended, p. 176, § 4, effective March 22. L. 2008: (10) added, p. 2076, § 4, effective June 3.

**Editor's note:** Subsection (9) provided for the repeal of this section, effective July 1, 2010. (See L. 2005, p. 1026.)

**Cross references:** For the legislative declaration contained in the 2008 act enacting subsection (10), see section 1 of chapter 411, Session Laws of Colorado 2008.

**10-16-103.5. Payment of premiums - required term in contract.** (1) Every contract between a carrier and a policyholder shall contain a provision that requires a policyholder to pay premiums:

(a) For each individual covered under the policyholder's policy through the date that the policyholder notifies the carrier that the individual covered under the policy is no longer eligible or covered; except that, if a dependent is no longer covered because the dependent becomes enrolled in the children's basic health plan, established pursuant to article 8 of title 25.5, C.R.S., the policyholder shall notify the carrier of the change in coverage at least thirty days prior to the date that the dependent is no longer covered; or

(b) Through the date that the policyholder notifies the carrier that the policyholder no longer intends to maintain coverage for the group through the carrier.

(2) Premiums shall be paid according to the premium payment provisions of the contract. The carrier shall include in the contract, in the billing notice, or in the application process for coverage, an option for the policyholder to make monthly premium payments and an option to make premium payments by automatic electronic transfer.

**Source:** L. 2002: Entire section added, p. 887, § 3, effective January 1, 2003. L. 2005: (2) amended, p. 345, § 2, effective December 31. L. 2007: (1)(a) amended, p. 471, § 3, effective July 1.

**10-16-104. Mandatory coverage provisions - definitions.** (1) **Newborn children.** (a) All group and individual sickness and accident insurance policies and all service or indemnity contracts issued by any entity subject to part 3 or 4 of this article shall provide coverage for a dependent newborn child of the insured or subscriber from the moment of birth.

(b) (I) Coverage for a hospital stay for a newborn following a normal vaginal delivery shall not be limited to less than forty-eight hours. If forty-eight hours following delivery falls after 8 p.m., coverage shall continue until 8 a.m. the following morning.

(II) Coverage for a hospital stay for a newborn following a cesarean section shall not be limited to less than ninety-six hours. If ninety-six hours following the cesarean section falls after 8 p.m., coverage shall continue until 8 a.m. the following morning.

(III) The provisions of subparagraphs (I) and (II) of this paragraph (b) shall not apply in any case in which the decision to discharge the newborn prior to the minimum length of

stay otherwise required under subparagraphs (I) and (II) of this paragraph (b) is made by an attending provider with the agreement of the mother.

(IV) Nothing in this paragraph (b) shall be construed to require a mother who is a participant or beneficiary to give birth in a hospital or to stay in the hospital for a fixed period of time after the birth of her child.

(V) Nothing in this paragraph (b) shall be construed as preventing a carrier from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan; except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subparagraphs (I) and (II) of this paragraph (b) may not be greater than such coinsurance or cost-sharing for any other sickness, injury, disease, or condition that is otherwise covered under the policy or contract.

(c) (I) Except as provided for cleft lip and cleft palate coverage in sub-subparagraph (A) of subparagraph (II) of this paragraph (c) and for inherited enzymatic disorders caused by single gene defects involved in the metabolism of amino, organic, and fatty acids and for which medically standard methods of diagnosis, treatment, and monitoring exist pursuant to sub-subparagraph (A) of subparagraph (III) of this paragraph (c), the benefits available to newborn children shall consist of coverage of injury or sickness, including all medically necessary care and treatment of medically diagnosed congenital defects and birth abnormalities for the first thirty-one days of the newborn's life, notwithstanding policy limitations and exclusions applicable to other conditions or procedures covered by the policy. Except as provided in sub-subparagraph (C) of subparagraph (II) of this paragraph (c), such coverage shall be subject to copayment, deductible, and aggregate dollar policy maximums that are no higher than are generally applicable under the policy to all other sicknesses, diseases, and conditions otherwise covered under the policy.

(II) (A) With regard to newborn children born with cleft lip or cleft palate or both, there shall be no age limit on benefits for such conditions, and care and treatment shall include to the extent medically necessary: Oral and facial surgery, surgical management, and follow-up care by plastic surgeons and oral surgeons; prosthetic treatment such as obturators, speech appliances, and feeding appliances; medically necessary orthodontic treatment; medically necessary prosthodontic treatment; habilitative speech therapy; otolaryngology treatment; and audiological assessments and treatment.

(B) Cleft lip, cleft palate, or any condition or illness which is related to or developed as a result of the cleft lip or cleft palate shall be considered to be compensable for coverage under the provisions of sub-subparagraph (A) of this subparagraph (II).

(C) If a dental insurance policy, a contract for dental insurance, or an enrollee coverage contract issued pursuant to this article is in effect at the time of the birth, or is purchased after the birth, of a child with cleft lip or cleft palate or both, it shall provide fully for any orthodontics or dental care needed as a result of the cleft lip or cleft palate or both. Such policy or contract may contain the same copayment provisions for the coverage of cleft lip or cleft palate or both as apply to other conditions or procedures covered by the policy or contract.

(III) (A) Coverage for inherited enzymatic disorders caused by single gene defects involved in the metabolism of amino, organic, and fatty acids shall include, but not be limited to, the following diagnosed conditions: Phenylketonuria; maternal phenylketonuria; maple syrup urine disease; tyrosinemia; homocystinuria; histidinemia; urea cycle disorders; hyperlysinemia; glutaric acidemias; methylmalonic acidemia; and propionic acidemia. Covered care and treatment of such conditions shall include, to the extent medically necessary, medical foods for home use for which a physician who is a participating provider has issued a written, oral, or electronic prescription.

(B) There is no age limit on benefits for inherited enzymatic disorders specified in sub-subparagraph (A) of this paragraph (III) except for phenylketonuria. The maximum age to receive benefits for phenylketonuria is twenty-one years of age; except that the maximum age to receive benefits for phenylketonuria for women who are of child-bearing age is thirty-five years of age.

(C) As used in this subparagraph (III), "medical foods" means prescription metabolic formulas and their modular counterparts, obtained through a pharmacy, that are specifically



designated and manufactured for the treatment of inherited enzymatic disorders caused by single gene defects involved in the metabolism of amino, organic, and fatty acids and for which medically standard methods of diagnosis, treatment, and monitoring exist. Such formulas are specifically processed or formulated to be deficient in one or more nutrients and are to be consumed or administered enterally either via tube or oral route under the direction of a physician who is a participating provider. This sub-subparagraph (C) shall not be construed to apply to cystic fibrosis patients or lactose- or soy-intolerant patients.

(D) Coverage of medical foods, as provided under this subparagraph (III), shall only apply to insurance plans that include an approved pharmacy benefit and shall not apply to alternative medicines. Such coverage shall only be available through participating pharmacy providers. Nothing in this subparagraph (III) shall be construed as preventing a carrier from imposing deductibles, coinsurance, or other cost-sharing methods.

(d) If payment of a specific premium is required to provide coverage for a child, the policy may require that notification of birth of the newborn child and payment of the required premium must be furnished to the insurer or other entity within thirty-one days after the date of birth in order to have the coverage continue beyond such thirty-one-day period.

(e) The requirements of this section shall apply to all individual sickness and accident policies issued on and after July 1, 1975, and to all blanket and group sickness and accident policies issued, renewed, or reinstated on and after July 1, 1975, and to all subscriber or enrollee coverage contracts delivered or issued for delivery in this state on and after July 1, 1975.

(f) (I) Any contract of a prepaid dental plan of an entity subject to the provisions of part 5 of this article applied for that provides family coverage shall, as to such coverage of individuals in the family, also provide that the benefits applicable for children shall be payable with respect to a newly born child of the insured from the instant of such child's birth to the same extent that such coverage applies to other individuals in the family. If payment of a specific premium or capitation amount is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium or capitation amount shall be furnished to the organization within thirty-one days after the date of birth in order to have the coverage continue beyond the thirty-one-day period.

(II) The coverage for newborn children shall include any orthodontics or dental care needed as the result of the child being born with a cleft lip or cleft palate or both. The contract providing such coverage may contain the same copayment provisions as apply to other conditions or procedures covered by the contract.

(g) The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this subsection (1) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(1.3) **Early intervention services.** (a) As used in this subsection (1.3), unless the context otherwise requires:

(I) "Division" means the unit within the department of human services that is responsible for developmental disabilities services.

(II) "Early intervention services" means services as defined by the division in accordance with part C that are authorized through an eligible child's IFSP but that exclude nonemergency medical transportation; respite care; service coordination, as defined in 34 CFR 303.12 (d) (11); and assistive technology, unless assistive technology is covered under the applicable insurance policy or service or indemnity contract as durable medical equipment.

(III) "Eligible child" means an infant or toddler, from birth through two years of age, who is an eligible dependent and who, as defined by the department pursuant to section 27-10.5-702 (9), C.R.S., has significant delays in development or has a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development or who is eligible for services pursuant to section 27-10.5-102 (11) (c), C.R.S.

(IV) "Individualized family service plan" or "IFSP" means a written plan developed pursuant to 20 U.S.C. sec. 1436 and 34 CFR 303.340 that authorizes early intervention

services to an eligible child and the child's family. An IFSP shall serve as the individualized plan, pursuant to section 27-10.5-102 (20) (c), C.R.S., for an eligible child from birth through two years of age.

(V) "Part C" means the early intervention program for infants and toddlers who are eligible for services under part C of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq.

(VI) "Qualified early intervention service provider" or "qualified provider" means a person or agency, as defined by the division in accordance with part C, who provides early intervention services and is listed on the registry of early intervention service providers pursuant to section 27-10.5-708 (1) (a), C.R.S.

(b) (I) All individual and group sickness and accident insurance policies or contracts issued or renewed by an entity subject to part 2 of this article on or after January 1, 2008, and all service or indemnity contracts issued or renewed by an entity subject to part 3 or 4 of this article on or after January 1, 2008, that include dependent coverage shall provide coverage for early intervention services delivered by a qualified early intervention service provider to an eligible child. Early intervention services specified in an eligible child's IFSP shall qualify as meeting the standard for medically necessary health care services as used by private health insurance plans.

(II) The coverage required by this subsection (1.3) shall be available annually to an eligible child from birth up to the child's third birthday and shall be limited to five thousand seven hundred twenty-five dollars, including case management costs, for early intervention services for each dependent child per calendar or policy year. For policies or contracts issued or renewed on or after January 1, 2009, and on or after each January 1 thereafter, the limit shall be adjusted by the division based on the consumer price index for the Denver-Boulder-Greeley metropolitan statistical area for the state fiscal year that ends in the preceding calendar year, or by such additional amount to be equal to the increase by the general assembly to the annual appropriated rate to serve one child for one fiscal year in the state-funded early intervention program if that increase is more than the consumer price index increase.

(III) Except as provided in paragraph (d) of this subsection (1.3), the coverage shall not be subject to deductibles or copayments, and any benefits paid under the coverage required by this subsection (1.3) shall not be applied to an annual or lifetime maximum benefit contained in the policy or contract. Unless the carrier agrees prior to the provision of early intervention services, a carrier shall not be required to pay a reimbursement rate for early intervention services provided by a nonparticipating provider that exceeds the reimbursement rate allowed for comparable early intervention services provided by a participating provider.

(IV) The limit on the amount of coverage for early intervention services specified in subparagraph (II) of this paragraph (b) shall not apply to:

(A) Rehabilitation or therapeutic services that are necessary as the result of an acute medical condition or post-surgical rehabilitation;

(B) Services provided to a child who is not participating in part C and services that are not provided pursuant to an IFSP. However, such services shall be covered at the level specified in paragraph (b) of subsection (1.7) of this section.

(c) This subsection (1.3) shall not apply to the following:

(I) Short-term, accident, fixed indemnity, or specified disease policies, disability income contracts, limited benefit health insurance, as defined by the commissioner by rule, credit disability insurance, or a medicare supplement policy as defined in section 10-18-101 (4);

(II) Workers' compensation or similar insurance;

(III) Automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and required by law to be contained in any liability insurance policy or equivalent self-insurance.

(d) (I) The coverage required by this subsection (1.3) may be offered through a high deductible plan that would qualify for a health savings account pursuant to 26 U.S.C. sec. 223; except that a carrier may apply deductible amounts for the required coverage if it is not



considered by the United States department of treasury to be preventive or to have an acceptable deductible amount.

(II) If a high deductible plan that would qualify for a health savings account pursuant to 26 U.S.C. sec. 223 requires a deductible or copayment amount for the coverage required by this subsection (1.3), the deductible or copayment amount may be paid by the state as determined by rules adopted by the commissioner in accordance with article 4 of title 24, C.R.S., in consultation with the division of insurance.

(d.5) Payment of benefits for an eligible child shall be made in accordance with section 27-10.5-709 (1), C.R.S. Qualified early intervention service providers that receive reimbursement in accordance with this paragraph (d.5) shall accept such reimbursement as payment in full for services provided under this subsection (1.3) and shall not seek additional reimbursement from either the covered person or the carrier.

(e) Within ninety days after the division determines that a child is no longer an eligible child for purposes of this subsection (1.3), the division shall notify the carrier that the child is no longer eligible and that the carrier is no longer required to provide the coverage required by this subsection (1.3) for that child.

(f) Use of available coverage under this subsection (1.3) for the cost of early intervention services is mandatory, consistent with the requirements of part C. An eligible child must fully utilize available coverage under this subsection (1.3) prior to accessing state general funds or federal part C funds. A carrier shall not terminate or fail to renew health coverage on the basis that an eligible child has accessed or will be accessing early intervention services under this subsection (1.3).

(g) Early intervention services shall be provided as specified in the eligible child's IFSP, and such services shall not duplicate or replace treatment for autism spectrum disorders provided in accordance with subsection (1.4) of this section. Services for the treatment of autism spectrum disorders provided in accordance with subsection (1.4) of this section shall be considered the primary service to an eligible child, and early intervention services provided under this subsection (1.3) shall supplement, but not replace, services provided under subsection (1.4) of this section.

(1.4) **Autism spectrum disorders.** (a) As used in this subsection (1.4), unless the context otherwise requires:

(I) "Applied behavior analysis" means the use of behavior analytic methods and research findings to change socially important behaviors in meaningful ways.

(II) "Autism services provider" means any person who provides direct services to a person with autism spectrum disorder, is licensed, certified, or registered by the applicable state licensing board or by a nationally recognized organization, and who meets one of the following:

(A) Has a doctoral degree with a specialty in psychiatry, medicine, or clinical psychology, is actively licensed by the Colorado medical board, and has at least one year of direct experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism spectrum disorders;

(B) Has a doctoral degree in one of the behavioral or health sciences and has completed one year of experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism spectrum disorders;

(C) Has a master's degree or higher in behavioral sciences and is nationally certified as a "board certified behavior analyst" or certified by a similar nationally recognized organization;

(D) Has a master's degree or higher in one of the behavior or health sciences, is credentialed as a related services provider, and has completed one year of direct supervised experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism spectrum disorders. For the purposes of this sub-subparagraph (D), "related services provider" means a physical therapist, occupational therapist, or speech therapist.

(E) Has a baccalaureate degree or higher in behavioral sciences and is nationally certified as a "board certified associate behavior analyst" or certified by a similar nationally recognized organization.

(III) "Autism spectrum disorders" or "ASD" includes the following neurobiological disorders: Autistic disorder, Asperger's disorder, and atypical autism as a diagnosis within pervasive developmental disorder not otherwise specified, as defined in the most recent edition of the diagnostic and statistical manual of mental disorders, at the time of the diagnosis.

(IV) "Health benefit plan" shall have the same meaning as provided in section 10-16-102 (21). In addition, the term "health benefit plan", as used in this subsection (1.4), excludes short-term limited duration health insurance policies as defined in section 10-16-102 (21) (b). "Health benefit plan", as used in this subsection (1.4), does not include individual health benefit plans.

(V) "Individualized education program" shall have the same meaning as provided in section 22-20-103, C.R.S.

(VI) "Individualized family service plan" shall have the same meaning as provided in section 27-10.5-102, C.R.S.

(VII) "Individualized plan" shall have the same meaning as provided in section 27-10.5-102, C.R.S.

(VIII) "Pharmacy care" means medications prescribed by a physician licensed by the Colorado medical board under the "Colorado Medical Practice Act", article 36 of title 12, C.R.S.

(IX) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed by the Colorado medical board under the "Colorado Medical Practice Act", article 36 of title 12, C.R.S.

(X) "Psychological care" means direct or consultative services provided by a psychologist licensed by the state board of psychologist examiners pursuant to part 3 of article 43 of title 12, C.R.S., or a social worker licensed by the state board of social work examiners pursuant to part 4 of article 43 of title 12, C.R.S.

(XI) "Therapeutic care" means services provided by a speech therapist, an occupational therapist registered to practice occupational therapy pursuant to article 40.5 of title 12, C.R.S., a physical therapist licensed to practice physical therapy pursuant to article 41 of title 12, C.R.S., or an autism services provider. "Therapeutic care" includes, but is not limited to, speech, occupational, and applied behavior analytic and physical therapies.

(XII) "Treatment for autism spectrum disorders" shall be for treatments that are medically necessary, appropriate, effective, or efficient. The treatments listed in this subparagraph (XII) are not considered experimental or investigational and are considered appropriate, effective, or efficient for the treatment of autism. "Treatment for autism spectrum disorders" shall include the following:

(A) Evaluation and assessment services;

(B) Behavior training and behavior management and applied behavior analysis, including but not limited to consultations, direct care, supervision, or treatment, or any combination thereof, for autism spectrum disorders provided by autism services providers;

(C) Habilitative or rehabilitative care, including, but not limited to, occupational therapy, physical therapy, or speech therapy, or any combination of those therapies. For a person who is also covered under subsection (1.7) of this section, the level of benefits for occupational therapy, physical therapy, or speech therapy shall exceed the limit of twenty visits for each therapy if such therapy is medically necessary to treat autism spectrum disorders under this subsection (1.4).

(D) Pharmacy care and medication, if covered by the health benefit plan;

(E) Psychiatric care;

(F) Psychological care, including family counseling; and

(G) Therapeutic care.

(XIII) "Treatment plan" means a plan developed for an individual by an autism services provider and prescribed by a licensed physician or a licensed psychologist pursuant to a comprehensive evaluation or reevaluation for an individual consisting of the individual's diagnosis; proposed treatment by type, frequency, and anticipated treatment; the anticipated outcomes stated as goals; and the frequency by which the treatment plan will be updated. The treatment plan shall be developed in accordance with the patient-centered medical home as defined in section 25.5-1-103 (5.5), C.R.S.



(b) (I) On or after July 1, 2010, all health benefit plans issued or renewed in this state shall provide coverage for the assessment, diagnosis, and treatment of autism spectrum disorders for a child pursuant to this subsection (1.4). For a child from birth through eight years of age up to, but not including, nine years of age, the annual maximum benefit for applied behavior analysis for autism spectrum disorders required by this subsection (1.4) shall be in an amount not to exceed thirty-four thousand dollars and for a child nine years of age or older and under nineteen years of age, the annual maximum benefit for applied behavior analysis for autism spectrum disorders required by this subsection (1.4) shall be in an amount not to exceed twelve thousand dollars.

(II) Nothing in this subsection (1.4) shall be construed to:

(A) Require or permit a carrier to reduce benefits provided for autism spectrum disorders if a health benefit plan already provides coverage that exceeds the requirements of this subsection (1.4);

(B) Prevent a carrier from increasing benefits provided for autism spectrum disorders; or

(C) Limit coverage for physical or mental health benefits covered under a health benefit plan.

(c) Treatment for autism spectrum disorders shall be prescribed or ordered by a licensed physician or licensed psychologist.

(d) A health benefit plan offered to residents of this state providing basic health care services that is delivered, issued for delivery, or renewed in this state shall not exclude autism spectrum disorders or impose additional requirements for authorization of services that operate to exclude coverage for the assessment, diagnosis, and treatment of autism spectrum disorders.

(e) Except as otherwise provided in paragraph (b) of this subsection (1.4), the coverage required under this subsection (1.4) shall not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health benefit plan. The benefits of this subsection (1.4) shall be in addition to any benefits provided for in subsections (1.3) and (1.7) of this section.

(f) Benefits provided by a carrier on behalf of a covered individual for any care, treatment, intervention, service, or item, the provision of which was for the treatment of a health condition not diagnosed as an autism spectrum disorder, shall not be applied toward any maximum benefit amount established under this subsection (1.4).

(g) A carrier may not deny or refuse to provide otherwise covered services, refuse to issue, renew, or reissue, or otherwise restrict or terminate coverage under a health benefit plan because the individual or his or her covered dependent is diagnosed with an autism spectrum disorder or due to the individual's or dependent's utilization of services for which benefits are mandated by this subsection (1.4).

(h) Any review of a treatment plan or any appeal of a decision regarding treatment shall be subject to the rules of the commissioner on prompt investigation of health plan claims involving utilization review and denial of benefits.

(i) Nothing in this subsection (1.4) shall be construed as affecting any obligation to provide services to an individual under an individualized family service plan, an individualized education program, or an individualized plan. The services required to be covered by this subsection (1.4) shall be in addition to any services provided to an individual under an individualized family service plan, an individualized education program, or an individualized plan.

(j) Coverage under this subsection (1.4) is subject to all terms, conditions, definitions, restrictions, exclusions, limitations, and utilization review of health care services that apply to any other coverage under the health benefit plan, including the treatment under the health benefit plan of services performed by participating and nonparticipating providers.

(1.5) (Deleted by amendment, L. 2009, (HB 09-1204), ch. 344, p. 1802, § 2, effective January 1, 2010.)

(1.7) **Therapies for congenital defects and birth abnormalities.** (a) After the first thirty-one days of life, policy limitations and exclusions that are generally applicable under the policy may apply; except that all individual and group health benefit plans shall provide

medically necessary physical, occupational, and speech therapy for the care and treatment of congenital defects and birth abnormalities for a covered child from the child's third birthday to the child's sixth birthday.

(b) The level of benefits required in paragraph (a) of this subsection (1.7) shall be the greater of the number of such visits provided under the policy or plan or twenty therapy visits per year each for physical therapy, occupational therapy, and speech therapy. Said therapy visits shall be distributed as medically appropriate throughout the yearly term of the policy or yearly term of the enrollee coverage contract, without regard to whether the condition is acute or chronic and without regard to whether the purpose of the therapy is to maintain or to improve functional capacity.

(c) The coverage described in this subsection (1.7) is subject to the provisions of section 10-16-118 (1) (b).

(d) The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this subsection (1.7) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(2) **Complications of pregnancy and childbirth.** (a) Any sickness and accident insurance policy providing indemnity for disability due to sickness issued by an entity subject to the provisions of part 2 of this article and any individual or group service or indemnity contract issued by an entity subject to part 3 of this article shall provide coverage for a sickness or disease which is a complication of pregnancy or childbirth in the same manner as any other similar sickness or disease is otherwise covered under the policy or contract. Any sickness and accident insurance policy providing indemnity for disability due to accident shall provide coverage for an accident which occurs during the course of pregnancy or childbirth in the same manner as any other similar accident is covered under the policy.

(b) Any sickness and accident insurance policy providing coverage for sickness on an expense-incurred basis shall provide coverage for a sickness or disease which is a complication of pregnancy or childbirth in the same manner as any other similar sickness or disease is otherwise covered under the policy.

(3) **Maternity coverage.** (a) (I) All group sickness and accident insurance policies providing coverage within the state and issued to an employer by an entity subject to part 2 of this article, all group health service contracts issued by an entity subject to part 3 or 4 of this article and issued to an employer, all individual sickness and accident insurance policies issued by an entity subject to part 2 of this article, and all individual health care or indemnity contracts issued by an entity subject to part 3 or 4 of this article, except supplemental policies covering a specified disease or other limited benefit, shall insure against the expense of normal pregnancy and childbirth or provide coverage for maternity care and provide coverage for contraception in the same manner as any other sickness, injury, disease, or condition is otherwise covered under the policy or contract. Individual sickness and accident insurance policies or contracts may exclude coverage for pregnancy and delivery expenses on the grounds that pregnancy was a preexisting condition. The exclusion for the pregnancy as a preexisting condition under the policy or contract shall not apply for any subsequent pregnancies. Group sickness and accident insurance policies or contracts shall not exclude coverage for pregnancy and delivery expenses on the grounds that pregnancy was a preexisting condition.

(II) Coverage for a hospital stay following a normal vaginal delivery shall not be limited to less than forty-eight hours. If forty-eight hours following delivery falls after 8 p.m., coverage shall continue until 8 a.m. the following morning.

(III) Coverage for a hospital stay following a cesarean section shall not be limited to less than ninety-six hours. If ninety-six hours following the cesarean section falls after 8 p.m., coverage shall continue until 8 a.m. the following morning.

(IV) The provisions of subparagraphs (II) and (III) of this paragraph (a) shall not apply in any case in which the decision to discharge prior to the minimum length of stay otherwise required under subparagraphs (II) and (III) of this paragraph (a) is made by an attending provider with the agreement of the mother.



(V) Nothing in this paragraph (a) shall be construed to require a mother who is a participant or beneficiary to give birth in a hospital or to stay in the hospital for a fixed period of time after the birth of her child.

(VI) Nothing in this paragraph (a) shall be construed as preventing a carrier from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan; except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subparagraphs (II) and (III) of this paragraph (a) may not be greater than such coinsurance or cost-sharing for any other sickness, injury, disease, or condition that is otherwise covered under the policy or contract.

(b) The requirement in paragraph (a) of this subsection (3) shall not apply to policies or contracts purchased by employers who employ any number of full-time or part-time employees in fewer than fifteen full-time employee positions or to employers who employ any number of full-time or part-time employees for not more than six consecutive months each year on a seasonal basis if such coverage as required in paragraph (a) of this subsection (3) is provided by the employer in one of the following methods:

(I) **Self-insurance.** All employers who elect under this subparagraph (I) to utilize self-insurance for providing this benefit shall provide written notice to affected employees and to the health insurance carrier of its choice to self-insure.

(II) A policy purchased from an insurance company authorized to do business in this state which meets all of the requirements of the division of insurance for that purpose;

(III) A contract issued by an entity subject to the provisions of part 3 or 4 of this article;

(IV) A combination of the methods of obtaining insurance authorized in subparagraphs (I) to (III) of this paragraph (b).

(c) An entity authorized under the provisions of part 3 or 4 of this article to issue service or indemnity-type contracts shall offer coverage for maternity care to both married and unmarried women in individual, nonfamily contracts and shall offer the same coverage and the same payment of costs for maternity benefits to unmarried women that it offers to married women.

(4) (Deleted by amendment, L. 2009, (HB 09-1204), ch. 344, p. 1802, § 2, effective January 1, 2010.)

(5) **Mental illness.** Every small group policy providing hospitalization or medical benefits by an entity subject to the provisions of part 2 or 3 of this article must provide benefits for conditions arising from mental illness at least equal to the following:

(a) In the case of basic coverage benefits based upon either confinement as an inpatient or partial hospitalization in a hospital or psychiatric hospital licensed by the department of public health and environment, the period of confinement for which benefits are payable shall be at least forty-five days for inpatient care or ninety days for partial hospitalization in any one twelve-month-benefit period. For the purpose of computing the period for which benefits are payable, each two days of partial hospitalization care shall reduce by one day the forty-five days available for inpatient care, and each day of inpatient care shall reduce by two days the ninety days available for partial hospitalization care. Each day of confinement as an inpatient or each two days of partial hospitalization shall reduce by one day the total days available for all other illnesses during any one twelve-month-benefit period. Each day of confinement as an inpatient in a hospital or psychiatric hospital or each two days of partial hospitalization shall reduce by one day the available days provided under subsection (9) of this section. For the purpose of this subsection (5), "partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period.

(b) (I) In the case of major medical coverage, benefits shall cover outpatient services furnished by a comprehensive health care service corporation, a hospital, or a community mental health center or other mental health clinics approved by the department of human services to furnish mental health services; or furnished by a registered professional nurse within the scope of his or her license; or furnished by a licensed clinical social worker within the scope of his or her license; or furnished by or under the supervision of a licensed physician or licensed psychologist acting in compliance with part 3 of article 43 of title 12, C.R.S. Except as provided in subparagraph (II) of this paragraph (b), the services provided

under this paragraph (b) shall be under the direct supervision of a physician or a licensed psychologist acting in compliance with part 3 of article 43 of title 12, C.R.S. The patient records shall show that the attending physician or licensed psychologist acting in compliance with part 3 of article 43 of title 12, C.R.S., either saw the patient or had a written summary of consultations or a personal consultation with the therapist at least once every ninety days.

(II) If any mental health services are a benefit made available under major medical coverage or as a benefit made available by an entity subject to the provisions of part 3 of this article and such services are performed by a registered professional nurse or licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist who is licensed to practice in this state, reimbursement for these services shall not be denied and shall be made directly to the registered professional nurse, licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist when acting as an independent provider, whether or not such services are provided under the direct supervision of a physician or licensed psychologist. Nothing in this subparagraph (II) shall be interpreted to expand the scope of professional nursing, licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist practice.

(III) For purposes of this subsection (5), "licensed clinical social worker" means a person who is licensed as a clinical social worker under part 4 of article 43 of title 12, C.R.S., and who has at least five years of experience in psychotherapy, as defined in section 12-43-201, C.R.S., under appropriate supervision, beyond a master's degree; "licensed professional counselor" means a person who is licensed as a professional counselor under part 6 of article 43 of title 12, C.R.S., and who has at least five years of experience in psychotherapy, as defined in section 12-43-201, C.R.S., under appropriate supervision, beyond a master's degree; and "licensed marriage and family therapist" means a person who is licensed as a marriage and family therapist under part 5 of article 43 of title 12, C.R.S., and who has at least five years of experience in psychotherapy, as defined in section 12-43-201, C.R.S., under appropriate supervision, beyond a master's degree.

(c) An entity subject to the provisions of part 2 or 3 of this article may establish a copayment or coinsurance requirement for mental illness, which may or may not differ from the copayment or coinsurance requirement established for any other condition or illness; except that copayment or coinsurance requirements for mental illness shall not exceed a fifty percent copayment or coinsurance requirement. Such entity may establish a deductible amount for mental illness, but such deductible amount shall not differ from the deductible amount for any other condition or illness. In addition, such entity may limit the aggregate benefits payable under paragraph (b) of this subsection (5) to an amount of not less than one thousand dollars in any one twelve-month benefit period or not less than twenty visits per year.

(d) (I) No person shall disclose mental health history, diagnosis, or treatment services information received in an initial application for coverage or subsequent claims for benefits to any person, group, organization, or governmental agency, without written consent of the insured, except for purposes of obtaining professional review and judgments of quality and appropriateness of treatment rendered; for purposes of litigation proceedings involving the insured and when ordered by a court; for purposes of reinsurance, when required; for purposes of applying overinsurance provisions; and for purposes of claiming benefits for services on behalf of the insured.

(II) A person shall not be required to report such person's social security number for the purpose of obtaining coverage or, after obtaining coverage, claiming benefits when not required by applicable federal statute or regulation.

(e) The commissioner may exempt from the requirements of paragraphs (a) and (b) of this subsection (5) any small group policy or type of small group policy with respect to which the commissioner has determined that the prescribed mental illness benefits are inapplicable or inappropriate.

(f) The provisions of paragraphs (a) to (e) of this subsection (5) shall apply to all small group policies issued, renewed, or reinstated on and after January 1, 1976.

(g) Every small group plan that is a health care service plan providing hospitalization or medical benefits under the provisions of part 4 of this article shall provide benefits for



conditions arising from mental illness at least equal to the benefits required by this subsection (5). The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this subsection (5) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(h) For purposes of this subsection (5), "mental illness" does not include autism. Autism shall be governed by the provisions of section 10-16-104.5.

(5.5) **Biologically based mental illness and mental disorders.** (a) (I) Every group policy, plan certificate, and contract of a carrier subject to the provisions of part 2, 3, or 4 of this article, except those described in section 10-16-102 (21) (b), shall provide coverage for the treatment of biologically based mental illness that is no less extensive than the coverage provided for a physical illness.

(II) Every group policy, plan certificate, and contract of a carrier subject to the provisions of part 2, 3, or 4 of this article, except a small group plan, as defined in section 10-16-102 (42), and a policy or plan as described in section 10-16-102 (21) (b), shall provide coverage for the treatment of mental disorders that is no less extensive than the coverage provided for a physical illness.

(III) Any preauthorization or utilization review mechanism used in the determination to provide the coverage required by this paragraph (a) shall be the same as, or no more restrictive than, that used in the determination to provide coverage for a physical illness; except that a carrier that does not use utilization review mechanisms in determining whether to provide coverage for a physical illness may use utilization review mechanisms for determining whether to provide coverage for drug and alcohol disorders and eating disorders as part of the required coverage for mental disorders. The commissioner shall adopt such rules as are necessary to carry out the provisions of this subsection (5.5). In promulgating such rules, the commissioner shall recognize that the substance of the mechanisms for preauthorization or utilization review may differ between medical specialties and that such mechanisms shall not be more restrictive with respect to a covered person or a mental health provider for a determination under this paragraph (a) than for any other physical illness.

(IV) As used in this subsection (5.5):

(A) "Biologically based mental illness" means schizophrenia, schizoaffective disorder, bipolar affective disorder, major depressive disorder, specific obsessive-compulsive disorder, and panic disorder.

(B) "Mental disorder" means posttraumatic stress disorder, drug and alcohol disorders, dysthymia, cyclothymia, social phobia, agoraphobia with panic disorder, and general anxiety disorder. The term includes anorexia nervosa and bulimia nervosa to the extent those diagnoses are treated on an out-patient, day treatment, and in-patient basis, exclusive of residential treatment.

(b) Benefits provided under this subsection (5.5) through a small group plan are not required to be provided to the extent that such benefits duplicate benefits required to be provided under subsection (5) of this section.

(c) The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this subsection (5.5) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(6) **Dependent children.** (a) No entity subject to the provisions of this article or section 607 (1) of the federal "Employee Retirement Income Security Act of 1974", as amended, shall refuse to accept and honor an otherwise valid claim for a covered benefit that is filed by either parent of a covered child, or by the state department of human services in the case of an assignment under section 26-13-106, C.R.S., who submits valid copies of medical bills. A claim submitted by a custodial parent who is not the insured under a policy issued by an entity subject to the provisions of this article or section 607 (1) of the federal "Employee Retirement Income Security Act of 1974", as amended, shall be deemed a valid assignment of benefits for payment to the health care provider.

(b) No entity described in paragraph (a) of this subsection (6) shall refuse to provide coverage for a dependent child under the health plan of the child's parent for the sole reason that the child:

- (I) Does not live in the home of the parent applying for the policy; or
- (II) Does not live in the insurer's service area, notwithstanding any other provision of law restricting enrollment to persons who reside in an insurer's service area; or
- (III) Was born out of wedlock; or
- (IV) Is not claimed as a dependent on the federal or state income tax return of the child's parent.

(c) When a dependent child is enrolled in a health insurance plan of a parent with whom the child resides less than fifty percent of the time, the entity described in paragraph (a) of this subsection (6) shall:

(I) Provide to the dependent child's parent with whom the child resides the majority of the time information that is necessary for the dependent child to obtain medical benefits and services;

(II) Allow the parent described in subparagraph (I) of this paragraph (c), the health care provider with such parent's approval, or the state to submit claims for covered services without the approval of the other parent;

(III) Make payments directly to the parent described in subparagraph (I) of this paragraph (c), the health care provider, or the state medical assistance agency on claims submitted pursuant to subparagraph (II) of this paragraph (c).

(d) Whenever a parent of a dependent child with whom the child resides less than fifty percent of the time is subject to a court or an administrative order to provide health care coverage for the dependent child, and such parent is eligible for family health care coverage through the parent's employment, the entity described in paragraph (a) of this subsection (6) shall:

(I) Permit such parent to enroll the dependent child under the family coverage plan, regardless of any enrollment season restriction;

(II) Enroll the dependent child upon application for enrollment by the parent with whom the child resides the majority of the time, the state medical assistance agency, or the state child support enforcement agency or a delegate child support enforcement unit if the parent with whom the child resides less than fifty percent of the time is enrolled in a family coverage plan but fails to enroll the dependent child, regardless of any enrollment restrictions;

(III) Not cancel or revoke enrollment of the dependent child, or eliminate coverage for the dependent child, unless the insurer is provided with satisfactory written proof that:

(A) The court or administrative order for health care coverage is no longer in effect; or

(B) The child is or will be enrolled in a comparable plan through another insurer, which enrollment takes effect no later than the effective date of the cancellation or revocation of enrollment or the elimination of coverage.

(e) An entity described in paragraph (a) of this subsection (6) shall not impose on the state medical assistance agency that is assigned the right to recover medical costs on behalf of a medical assistance recipient any requirement that is not imposed on or applicable to other agents or assignees.

**(6.5) Adopted child - dependent coverage.** (a) Whenever an entity described in paragraph (a) of subsection (6) of this section offers coverage for dependent children under a health plan, the entity shall provide benefits to a child placed for adoption with an enrollee, policyholder, or subscriber under the same terms and conditions that apply to a natural dependent of an enrollee, policyholder, or subscriber, regardless of whether adoption of the child is final.

(b) An entity described in paragraph (a) of subsection (6) of this section shall not deny or restrict coverage to an adopted child of an enrollee, policyholder, or subscriber or a child placed for adoption with an enrollee, policyholder, or subscriber on the basis of a preexisting condition if the child would otherwise be eligible for enrollment or coverage and the adoption or placement occurs while the adoptive parent or parent with whom the child is placed is enrolled in the plan.

(c) For the purposes of this subsection (6.5), unless the context otherwise requires:

(I) "Child" means a person who has not attained eighteen years of age.



(II) "Placed for adoption" means circumstances under which a person assumes or retains a legal obligation to partially or totally support a child in anticipation of the child's adoption. A placement terminates at the time such legal obligation terminates.

(6.7) **Medical assistance recipients - denial of coverage - liability to state.** (a) No entity subject to the provisions of this article, article 8 of this title, or section 607 (1) of the federal "Employee Retirement Income Security Act of 1974", as amended, shall refuse to enroll a person for the sole reason that the person is a medical assistance recipient for whom coverage is sought pursuant to section 25.5-4-210, C.R.S., or refuse to accept and honor an otherwise valid claim for a covered benefit which is filed in the case of an assignment under the provisions of articles 4, 5, and 6 of title 25.5, C.R.S.

(b) An entity subject to this subsection (6.7) that is liable as a third party for the medical costs of a medical assistance recipient or that recovers or may recover medical costs from a third party who is liable to a medical assistance recipient for medical costs is liable to the state pursuant to section 25.5-4-301 (4), C.R.S.

(c) The state is deemed to have acquired the rights as an assignee of the medical assistance recipient to any payment by a third party for medical costs.

(7) **Reimbursement of providers.** (a) **Sickness and accident insurance.** (I) (A) Notwithstanding any provisions of any policy of sickness and accident insurance issued by an entity subject to the provisions of part 2 of this article or a prepaid dental care plan subject to the provisions of part 5 of this article, whenever any such policy or plan provides for reimbursement for a service that may be lawfully performed by a person licensed in this state for the practice of osteopathy, medicine, dentistry, dental hygiene, optometry, psychology, chiropractic, podiatry, or acupuncture, a carrier shall not deny reimbursement under the policy or plan when the service is rendered by a person so licensed. Nothing in this part 1 or part 2 or 5 of this article precludes a carrier from setting different fee schedules in an insurance policy for different services performed by different professions, but the carrier shall use the same fee schedule for those portions of health services that are substantially identical although performed by different professions.

(B) The licensed persons who may not be denied reimbursement pursuant to subparagraph (A) of this subparagraph (I) shall include registered professional nurses, licensed clinical social workers, and licensed addiction counselors. However, such inclusion shall not be interpreted as enlarging the scope of professional nursing, licensed clinical social worker, or licensed addiction counseling practice.

(II) The provisions of subparagraph (I) of this paragraph (a) shall apply:

(A) To all individual sickness and accident policies issued on and after July 1, 1973;

(B) To all blanket and group sickness and accident policies issued, renewed, or reinstated on and after July 1, 1973.

(b) **Nonprofit hospital, medical-surgical, and health service corporations.**

(I) (A) Corporations subject to the provisions of this part 1 and part 3 of this article may enter into contracts for the rendering of hospital services, medical-surgical services, and other health services on behalf of any of their subscribers with hospitals maintained by the state, or by any of its political subdivisions, or maintained by a nonprofit corporation organized for hospital purposes, or with other corporations, associations, partnerships, or individuals furnishing hospital services, medical-surgical services, or other health services. Nothing contained in this part 1 or part 3 of this article shall require any such corporation to contract or remain under contract with any individual hospital, physician, or other purveyor of health services; nor shall any employee, agent, officer, or trustee of any such corporation influence or seek to influence any subscriber in the choice or selection of a contracting hospital or contracting physician, or any other contracting purveyor of health services; except that nothing in this paragraph (b) shall prevent any such nonprofit corporation which has subscribers or members solely from one industry, from contracting with any physician or other purveyor of health services as referred to in subparagraph (II) of this paragraph (b) to provide medical, surgical, and other health services to such subscribers or members and their immediate families, nor prevent such corporation from specifying or recommending any physician or other purveyor of health services to render such services to its subscribers or members and their immediate families, for any particular type or classification of medical, surgical, or other health care. Nothing in this part 1 or part

3 of this article shall preclude a corporation, subject to the provisions of this part 1 and part 3 of this article, from setting different fee schedules in contracting for different health services performed by different professions, but the same fee schedule shall be used for that portion of health services which are substantially identical although performed by different professions.

(B) This subparagraph (I) shall apply for all contracts entered into or renewed on or after July 1, 1973, by corporations subject to the provisions of this part 1 and part 3 of this article.

(II) (A) The benefits or services which a corporation subject to the provisions of this part 1 and part 3 of this article may make available to its members or subscribers may include the services made available by hospitals, other licensed health care institutions, doctors of medicine, osteopathy, dentistry, optometry, and podiatry, nursing services, appliances, drugs, medicine, ambulance service, and such other health services or items as the board of trustees of any such corporation may approve; but no corporation subject to the provisions of this part 1 and part 3 of this article may offer to its members or subscribers any certificate or form which would provide for a cash payment or allowance for sickness, accident, disability, or death, other than payments of or toward the charges made by the purveyors of the health services covered by the certificates issued by said corporation, or for any form of casualty or life insurance unless such corporation shall first comply with the statutes of this state applicable to companies offering such forms of insurance.

(B) If a service is a benefit made available by a corporation subject to the provisions of this part 1 and part 3 of this article to its members or subscribers and such service is performed by a registered professional nurse within the scope of his or her license, by a licensed clinical social worker within the scope of his or her license, or by a licensed addiction counselor within the scope of his or her license, the reimbursement for such service shall be made directly to the registered professional nurse, licensed clinical social worker, or licensed addiction counselor when acting as an independent provider under contract with the corporation. However, such inclusion shall not be interpreted as expanding the scope of professional nursing, licensed clinical social worker, or licensed addiction counseling practice. Nothing shall be construed to allow duplicate payment for the same service by different providers.

(c) **Definitions.** As used in this subsection (7):

(I) "Licensed addiction counselor" shall have the same meaning as set forth in section 12-43-201, C.R.S.

(II) "Licensed clinical social worker" shall have the same meaning as set forth in subparagraph (III) of paragraph (b) of subsection (5) of this section.

(8) **Availability of hospice care coverage.** (a) As used in this subsection (8), unless the context otherwise requires:

(I) "Home health services" means home health services as defined in section 25.5-4-103 (7), C.R.S., which are provided by a home health agency certified by the department of public health and environment.

(II) "Hospice care" means hospice services provided to a terminally ill individual by a hospice care program, licensed and regulated by the department of public health and environment pursuant to sections 25-1.5-103 (1) (a) (I) and 25-3-101, C.R.S., or by others under arrangements made by such hospice care program.

(b) Notwithstanding any other provision of the law to the contrary, no individual or group policy of sickness and accident insurance issued by an insurer subject to the provisions of part 2 of this article and no plan issued by an entity subject to the provisions of part 3 of this article which provides hospital, surgical, or major medical coverage on an expense incurred basis shall be sold in this state unless a policyholder under such policy or plan is offered the opportunity to purchase coverage for benefits for the costs of home health services and hospice care which have been recommended by a physician as medically necessary. Nothing in this paragraph (b) shall require an insurer to offer coverages for which premiums would not cover expected benefits. This paragraph (b) shall not apply to any insurance policy, plan, contract, or certificate which provides coverage exclusively for disability loss of income, dental services, optical services, hospital confinement indemnity, accident only, or prescription drug services.



(c) The insurer or entity may adopt standards and criteria for eligibility to be applied to home health services programs and hospice care programs consistent with standards established in rules and regulations of the department of public health and environment.

(d) The commissioner, in consultation with the department of public health and environment, may establish by rule and regulation requirements for standard policy and plan provisions which state clearly and completely the criteria for and extent of insured coverage for home health services and hospice care. Such provisions shall be designed to facilitate prompt and informed decisions regarding patient placement and discharge.

(9) **Availability of coverage for alcoholism.** (a) Any other provision of law to the contrary notwithstanding, no hospitalization or medical benefits contract on a group basis issued by an insurer subject to the provisions of part 2 of this article or an entity subject to the provisions of part 3 of this article shall be sold in this state unless the policyholder under such contract or persons holding the master contract under such contract are offered the opportunity to purchase coverage for benefits for the treatment of and for conditions arising from alcoholism, which benefits are at least equal to the following minimum requirements:

(I) In the case of benefits based upon confinement as an inpatient in an accredited or licensed hospital or in any other public or private facility or portion thereof providing services especially for the treatment of alcoholics, which is licensed by the department of human services for those services, such benefits shall be not less than forty-five days in any calendar year.

(II) Each day of confinement as an inpatient shall reduce by one day the total days available for all other illnesses during any one twelve-month-benefit period.

(III) Each day of confinement as an inpatient shall reduce by one day the available days provided under subsection (5) of this section.

(b) Outpatient benefits shall cover, to the extent of five hundred dollars over a twelve-month period, services furnished by:

(I) An accredited or licensed hospital; or

(II) Any public or private facility or portion thereof providing services especially for the treatment of alcoholics, which is licensed by the department of human services for those purposes; or

(III) Any mental health facility approved as such by the department of human services.

(c) Such entity subject to the provisions of part 3 of this article shall enter into participating agreements with licensed hospitals and licensed alcoholism treatment centers to provide benefits for the treatment of alcoholism rendered in such facilities. Such entities may require provider standards developed in cooperation with the department of human services as a part of any such agreement.

(d) (I) Such entity subject to the provisions of part 2 or part 3 of this article offering coverage for alcoholism under this subsection (9) may establish a copayment requirement for such coverage which may or may not differ from the copayment requirement established for any other condition or illness; except that copayment requirements for the treatment of alcoholism shall not exceed a fifty percent copayment requirement.

(II) Such entity may establish a deductible amount for coverage pertaining to alcoholism, but such deductible amount shall not differ from the deductible amount for any other condition or illness.

(III) In any event, benefits will not be payable unless the patient having the coverage provided under this subsection (9) has completed the full continuum of care, including detoxification and rehabilitation.

(e) The commissioner may exempt from the requirements of this subsection (9) any policy or contract or type of contract with respect to which the commissioner has determined that the prescribed alcoholism benefits are inapplicable or inappropriate.

(10) **Prostate cancer screening.** (a) All individual and all group sickness and accident insurance policies, except supplemental policies covering a specified disease or other limited benefit, which are delivered or issued for delivery within the state by an entity subject to the provisions of part 2 of this article and all individual and group health care service or indemnity contracts issued by an entity subject to the provisions of part 3 or 4 of this article, as well as any other group health care coverage offered to residents of this state, shall provide coverage for annual screening for the early detection of prostate cancer in men

over the age of fifty years and in men over the age of forty years who are in high-risk categories, which coverage by entities subject to part 2 or 3 of this article shall not be subject to policy deductibles. Such coverage shall be the lesser of sixty-five dollars per prostate cancer screening or the actual charge for such screening. Such benefit shall in no way diminish or limit diagnostic benefits otherwise allowable under a policy. This coverage shall be provided according to the following guidelines:

(I) The screening shall be performed by a qualified medical professional, including without limitation a urologist, internist, general practitioner, doctor of osteopathy, nurse practitioner, or physician assistant.

(II) The screening shall consist, at a minimum, of the following tests:

(A) A prostate-specific antigen ("PSA") blood test;

(B) Digital rectal examination.

(III) At least one screening per year shall be covered for any man fifty years of age or older.

(IV) At least one screening per year shall be covered for any man from forty to fifty years of age who is at increased risk of developing prostate cancer as determined by the man's physician for an entity subject to part 2 or 3 of this article, or as determined by a participating physician for an entity subject to part 4 of this article.

(b) The requirements of this subsection (10) shall apply to all individual sickness and accident insurance policies and health care service or indemnity contracts issued on or after January 1, 1996, and to all group accident and sickness policies and group health care service or indemnity contracts issued, renewed, or reinstated on or after January 1, 1996.

(c) For purposes of this subsection (10), "sickness and accident insurance policy" does not include short-term, accident, fixed indemnity, specified disease policies or disability income contracts, and limited benefit or credit disability insurance, or such other insurance as defined in section 10-18-101 (3) or by the commissioner: The term also does not include insurance arising out of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or other similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy or equivalent self-insurance.

(d) The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits provided pursuant to this subsection (10) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(11) **Child health supervision services.** (a) For purposes of this subsection (11), unless the context otherwise requires, "child health supervision services" means those preventive services and immunizations required to be provided in basic and standard health benefit plans pursuant to section 10-16-105 (7.2), to dependent children up to age thirteen. Such services shall be provided by a physician or pursuant to a physician's supervision or by a primary health care provider who is a physician's assistant or registered nurse who has additional training in child health assessment and who is working in collaboration with a physician.

(b) An individual, small group, or large group health benefit plan issued in Colorado or covering a Colorado resident that provides coverage for a family member of the insured or subscriber, shall, as to such family member's coverage, also provide that the health insurance benefits applicable to children include coverage for child health supervision services up to the age of thirteen. Each such plan shall, at a minimum, provide benefits for preventive child health supervision services. A plan described in this paragraph (b) may provide that child health supervision services rendered during a periodic review shall only be covered to the extent such services are provided during the course of one visit by or under the supervision of a single physician, physician's assistant, or registered nurse.

(c) Benefits for child health supervision services shall be exempt from a deductible or dollar limit provision in any individual, small group, or large group health benefit plan issued in Colorado or covering a Colorado resident and such exemption shall be explicitly stated in such a plan. Any copayment or coinsurance applicable to the benefits received during the course of one visit pursuant to paragraph (b) of this subsection (11) shall not exceed the copayment or coinsurance payment applicable to a physician visit. A health



benefit plan issued by an entity subject to part 4 of this article may provide that the benefits offered pursuant to this subsection (11) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with such entity.

(d) A local government or political subdivision of this state is not required to offer to employees or dependents coverage for child health supervision services as required in this subsection (11) in any health benefit plan offered or made available to employees or dependents of the local government or political subdivision.

(e) This subsection (11) shall not apply to a multiple employer health trust, as described in section 10-3-903.5 (7) (b), or a multiple employer welfare arrangement, as described in section 10-3-903.5, but shall apply to those plans and entities subject to the jurisdiction of the division of insurance.

**(12) Hospitalization and general anesthesia for dental procedures for dependent children.** (a) All individual and all group sickness and accident insurance policies that are delivered or issued for delivery within the state by an entity subject to the provisions of part 2 of this article and all individual and group health care service or indemnity contracts issued by an entity subject to the provisions of part 3 or 4 of this article except supplemental policies that cover a specific disease or other limited benefit shall provide coverages for general anesthesia, when rendered in a hospital, outpatient surgical facility, or other facility licensed pursuant to section 25-3-101, C.R.S., and for associated hospital or facility charges for dental care provided to a dependent child, as dependent is defined in section 10-16-102 (14), of a covered person. Such dependent child shall, in the treating dentist's opinion, satisfy one or more of the following criteria:

(I) The child has a physical, mental, or medically compromising condition; or

(II) The child has dental needs for which local anesthesia is ineffective because of acute infection, anatomic variations, or allergy; or

(III) The child is an extremely uncooperative, unmanageable, anxious, or uncommunicative child or adolescent with dental needs deemed sufficiently important that dental care cannot be deferred; or

(IV) The child has sustained extensive orofacial and dental trauma.

(b) A carrier may:

(I) Require prior authorization for general anesthesia and outpatient surgical facilities or hospitalization for dental care procedures in the same manner that prior authorization is required for hospitalization for other covered diseases or conditions; and

(II) Require that if coverage is provided through a managed care plan, the benefits mandated pursuant to this subsection (12) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the carrier; and

(III) Restrict coverage to include anesthesia provided by an anesthesia provider only during procedures performed by an educationally qualified specialist in pediatric dentistry or other dentist educationally qualified in a recognized dental specialty for which hospital privileges are granted or who is certified by virtue of completion of an accredited program of post-graduate hospital training to be granted hospital privileges.

(c) The provisions of this subsection (12) shall not apply to treatment rendered for temporal mandibular joint (TMJ) disorders.

**(13) Diabetes.** (a) Any health benefit plan, except supplemental policies covering a specified disease or other limited benefit, that provides hospital, surgical, or medical expense insurance shall provide coverage for diabetes that shall include equipment, supplies, and outpatient self-management training and education, including medical nutrition therapy if prescribed by a health care provider licensed to prescribe such items pursuant to Colorado law, and, if coverage is provided through a managed care plan, such qualified provider shall be a participating provider in such managed care plan.

(b) Diabetes outpatient self-management training and education when prescribed shall be provided by a certified, registered, or licensed health care professional with expertise in diabetes.

(c) The benefits provided in this subsection (13) are subject to the same annual deductibles or copayments established for all other covered benefits within a given policy.

(d) Private third-party payors shall not reduce or eliminate coverage due to the requirements of this subsection (13).

(14) **Prosthetic devices.** (a) Any health benefit plan, except supplemental policies covering a specified disease or other limited benefit, that provides hospital, surgical, or medical expense insurance shall provide coverage for benefits for prosthetic devices that equal those benefits provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. secs. 1395k, 1395l, and 1395m and 42 CFR 414.202, 414.210, 414.228, and 410.100, as applicable to this subsection (14).

(b) For the purposes of this subsection (14) “prosthetic device” means an artificial device to replace, in whole or in part, an arm or leg.

(c) A health benefit plan may require prior authorization for prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

(d) Covered benefits are limited to the most appropriate model that adequately meets the medical needs of the patient as determined by the insured’s treating physician.

(e) Repairs and replacements of prosthetic devices are also covered, subject to copayments and deductibles, unless necessitated by misuse or loss.

(f) A carrier may require that, if coverage is provided through a managed care plan, the benefits mandated pursuant to this subsection (14) shall be covered benefits only if the prosthetic devices are provided by a vendor and prosthetic services are rendered by a provider who contracts with or is designated by the carrier, to the extent that a carrier provides in-network and out-of-network services, the coverage for the prosthetic device shall be offered no less extensively.

(15) Notwithstanding any provision to the contrary, a small employer may purchase health benefit coverage that does not include the coverage for benefits pursuant to subsections (5), (9), (10), (12), and (18) of this section through a basic health benefit plan pursuant to section 10-16-105 (7.2) (b) (I) or (7.2) (b) (III) or that does not include coverage for benefits pursuant to subsections (5), (9), (10), (12), (18) (b) (I), (18) (b) (II), and (18) (b) (IV) to (IX) of this section through a medical evidence-based health benefit plan authorized in section 10-16-105 (7.2) (b) (IV).

(16) (a) All group and individual sickness and accident insurance policies and all service or indemnity contracts issued by any entity subject to part 3 or 4 of this article shall not refuse to provide coverage to an individual, refuse to continue to cover an individual, or limit the amount or extent of coverage available to an individual solely based on that individual’s membership in the uniformed services of the United States. Nothing in this subsection (16) shall prohibit an insurer from excluding or limiting coverage for some other factor or preexisting condition.

(b) As used in this subsection (16):

(I) “Membership” means active duty, national guard, or reserve duty in the uniformed services of the United States, or retirement from such services.

(II) “Uniformed services of the United States” means the United States Army, United States Navy, United States Marine Corps, United States Air Force, United States Coast Guard, national oceanic and atmospheric administration commissioned officer corps, and the United States public health service commissioned corps.

(17) **Cervical cancer vaccines.** (a) All individual and all group sickness and accident insurance policies, except supplemental policies covering a specified disease or other limited benefit, that are delivered or issued for delivery within the state by an entity subject to the provisions of part 2 of this article and all individual and group health care service or indemnity contracts issued by an entity subject to the provisions of part 3 or 4 of this article, as well as any other group health care coverage offered to residents of this state, shall provide coverage for the full cost of cervical cancer vaccination for all females for whom a vaccination is recommended by the advisory committee on immunization practices of the United States department of health and human services.

(b) The requirements of this subsection (17) shall apply to all individual sickness and accident insurance policies and health care service or indemnity contracts issued on or after January 1, 2008, and to all group accident and sickness policies and group health care service or indemnity contracts issued, renewed, or reinstated on or after January 1, 2008.

(c) For purposes of this subsection (17), “sickness and accident insurance policy” does not include short-term, accident, fixed indemnity, specified disease policies or disability income contracts, and limited benefit or credit disability insurance, or such other insurance



as described in section 10-18-101 (3) or by the commissioner. The term also does not include insurance arising out of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or other similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in a liability insurance policy or equivalent self-insurance.

(d) The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits provided pursuant to this subsection (17) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(18) **Preventive health care services.** (a) (I) Except as specified in subparagraph (II) of this paragraph (a), the following policies and contracts that are delivered, issued, renewed, or reinstated on or after January 1, 2010, shall provide coverage for the total cost of the preventive health care services specified in paragraph (b) of this subsection (18):

(A) All individual and all group sickness and accident insurance policies, except supplemental policies covering a specified disease or other limited benefit, that are delivered or issued for delivery within the state by an entity subject to part 2 of this article;

(B) All individual and group health care service or indemnity contracts issued by an entity subject to part 3 or 4 of this article; and

(C) Any other individual or group health care coverage offered to residents of this state.

(II) Nothing in this subsection (18) shall be deemed to apply to a basic health benefit plan issued pursuant to section 10-16-105 (7.2) (b) (I), (7.2) (b) (III), or (7.2) (b) (IV); except that the required coverage for mammography set forth in subparagraph (III) of paragraph (b) of this subsection (18) shall apply to a basic health benefit plan issued pursuant to section 10-16-105 (7.2) (b) (IV).

(III) Coverage shall not be subject to policy deductibles or coinsurance. Copayments may apply as required by the policy, contract, or other health care coverage.

(b) The coverage required by this subsection (18) shall include preventive health care services for the following, in accordance with the A or B recommendations of the task force for the particular preventive health care service:

(I) Alcohol misuse screening and behavioral counseling interventions for adults by primary care providers;

(II) Cervical cancer screening;

(III) (A) Breast cancer screening with mammography.

(B) Coverage for breast cancer screening with mammography shall be the lesser of one hundred dollars per mammography screening or the actual charge for such screening, but in no case shall the covered person be required to pay more than the copayment required by the policy or contract for preventive health care services. The minimum benefit required under this subparagraph (III) shall be adjusted to reflect increases and decreases in the consumer price index.

(C) Benefits for preventive mammography screenings shall be determined on a calendar year or a contract year basis, which shall be specified in the policy or contract. The preventive and diagnostic coverages provided pursuant to this subparagraph (III) shall in no way diminish or limit diagnostic benefits otherwise allowable under a policy. If a covered person who is eligible for a preventive mammography screening benefit pursuant to this subparagraph (III) has not utilized such benefit during a calendar year or a contract year, then the coverage shall apply to one diagnostic screening for that year. If more than one diagnostic screening is provided for the covered person in a given calendar year or contract year, the other diagnostic service benefit provisions in the policy or contract shall apply with respect to the additional screenings.

(D) Notwithstanding the A or B recommendations of the task force, an annual breast cancer screening with mammography shall be covered for all individuals possessing at least one risk factor including, but not limited to, a family history of breast cancer, being forty years of age or older, or a genetic predisposition to breast cancer.

(IV) Cholesterol screening for lipid disorders;

(V) (A) Colorectal cancer screening coverage for tests for the early detection of colorectal cancer and adenomatous polyps.

(B) In addition to covered persons eligible for colorectal cancer screening coverage in accordance with A or B recommendations of the task force, colorectal cancer screening coverage required by this subparagraph (V) shall also be provided to covered persons who are at high risk for colorectal cancer, including covered persons who have a family medical history of colorectal cancer; a prior occurrence of cancer or precursor neoplastic polyps; a prior occurrence of a chronic digestive disease condition such as inflammatory bowel disease, Crohn's disease, or ulcerative colitis; or other predisposing factors as determined by the provider;

(VI) Childhood immunizations pursuant to the schedule established by the ACIP;

(VII) Influenza vaccinations pursuant to the schedule established by the ACIP;

(VIII) Pneumococcal vaccinations pursuant to the schedule established by the ACIP; and

(IX) Tobacco use screening of adults and tobacco cessation interventions by primary care providers.

(c) For purposes of this subsection (18):

(I) "ACIP" means the advisory committee on immunization practices to the centers for disease control and prevention in the federal department of health and human services, or any successor entity.

(II) "A recommendation" means a recommendation adopted by the task force that strongly recommends that clinicians provide a preventive health care service because the task force found there is a high certainty that the net benefit of the preventive health care service is substantial.

(III) "B recommendation" means a recommendation adopted by the task force that recommends that clinicians provide a preventive health care service because the task force found there is a high certainty that the net benefit is moderate or there is moderate certainty that the net benefit is moderate to substantial.

(IV) "Task force" means the U.S. preventive services task force, or any successor organization, sponsored by the agency for healthcare research and quality, the health services research arm of the federal department of health and human services.

(d) The health care service plan issued by an entity subject to part 4 of this article may provide that the benefits provided pursuant to this subsection (18) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(19) **Hearing aids for children - legislative declaration.** (a) The general assembly hereby finds and determines that the language development of children with partial or total hearing loss may be impaired due to the hearing loss. Children learn the concept of spoken language through auditory stimuli, and the language skills of children who have hearing loss improve when they are provided with hearing aids and access to visual language upon the discovery of hearing loss. The general assembly therefore declares that providing hearing aids to children with hearing loss will reduce the costs borne by the state, including special education, alternative treatments that would otherwise be necessary if a hearing aid were not provided, and other costs associated with such hearing loss.

(b) Any health benefit plan that provides hospital, surgical, or medical expense insurance, except supplemental policies covering a specified disease or other limited benefit, shall provide coverage for hearing aids for minor children who have a hearing loss that has been verified by a physician licensed pursuant to article 36 of title 12, C.R.S., and by an audiologist licensed pursuant to section 12-5.5-102, C.R.S. The hearing aids shall be medically appropriate to meet the needs of the child according to accepted professional standards. Coverage shall include the purchase of the following:

(I) Initial hearing aids and replacement hearing aids not more frequently than every five years;

(II) A new hearing aid when alterations to the existing hearing aid cannot adequately meet the needs of the child;

(III) Services and supplies including, but not limited to, the initial assessment, fitting, adjustments, and auditory training that is provided according to accepted professional standards.



(c) The benefits accorded pursuant to this subsection (19) shall be subject to the same annual deductible or copayment established for all other covered benefits within the insured's policy and utilization review as provided in sections 10-16-112, 10-16-113, and 10-16-113.5. The benefits shall also be subject to part 7 of this article.

(d) Health benefit plans issued by an entity subject to this part 1 may provide that the benefits required pursuant to this section shall be covered benefits only if the services are deemed medically necessary.

(20) **Clinical trials and studies.** (a) All individual and group health benefit plans shall provide coverage for routine patient care costs that a policy or certificate holder, or his or her dependent, receives during a clinical trial if:

(I) The covered person's treating physician, who is providing covered health care services to the person under the health benefit plan contract, recommends participation in the clinical trial after determining that participation in the clinical trial has the potential to provide a therapeutic health benefit to the covered person;

(II) The clinical trial or study is approved under the September 19, 2000, medicare national coverage decision regarding clinical trials, as amended;

(III) The patient care is provided by a certified, registered, or licensed health care provider practicing within the scope of his or her practice and the facility and personnel providing the treatment have the experience and training to provide the treatment in a competent manner;

(IV) Prior to participation in a clinical trial or study, the covered person has signed a statement of consent indicating that the covered person has been informed of the procedure to be undertaken, alternative methods of treatment, the general nature and extent of the risks associated with participation in the clinical trial or study, the coverage provided by an individual or group health benefit plan will be consistent with the coverage provided in the covered person's health benefit plan, and all out-of-network rates will apply; and

(V) The covered person suffers from a condition that is disabling, progressive, or life-threatening.

(b) The coverage required pursuant to paragraph (a) of this subsection (20) does not include:

(I) Any portion of the clinical trial or study that is paid for by a government or a biotechnical, pharmaceutical, or medical industry;

(II) Coverage for any drug or device that is paid for by the manufacturer, distributor, or provider of the drug or device;

(III) Extraneous expenses related to participation in the clinical trial or study including, but not limited to, travel, housing, and other expenses that a participant or person accompanying a participant may incur;

(IV) An item or service that is provided solely to satisfy a need for data collection or analysis that is not directly related to the clinical management of the participant;

(V) Costs for the management of research relating to the clinical trial or study; or

(VI) Health care services that, except for the fact that they are being provided in a clinical trial, are otherwise specifically excluded from coverage under the covered person's health plan.

(c) Nothing in this subsection (20) shall:

(I) Preclude a carrier from asserting the right to seek reimbursement from the entity conducting the clinical trial or study for expenses arising from complications caused by a drug or device used in the clinical trial or study;

(II) Be interpreted to provide a private cause of action against a carrier for damages arising as a result of compliance with this section.

(d) For the purposes of this section:

(I) "Clinical trial" means an experiment in which a drug or device is administered to, dispensed to, or used by one or more human subjects. An experiment may include the use of a combination of drugs as well as the use of a drug in combination with an alternative therapy or dietary supplement.

(II) "Routine patient care cost" means all items and services that are a benefit under a health coverage plan that would be covered if the covered person were not involved in either the experimental or the control arms of a clinical trial; except the investigational item

or service, itself; items and services provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the patient; items and services customarily provided by the research sponsors free of charge for any enrollee in the trial; routine costs in clinical trials that include items or services that are typically provided absent a clinical trial; items or services required solely for the provision of the investigational items or services, the clinically appropriate monitoring of the effects of the item of service, or the prevention of complications; and items or services needed for reasonable and necessary care arising from the provision of an investigational item or service, including the diagnosis or treatment of complications.

(21) **Oral anticancer medication.** (a) Any health benefit plan that provides coverage for cancer chemotherapy treatment shall provide coverage for prescribed, orally administered anticancer medication that has been approved by the federal food and drug administration and is used to kill or slow the growth of cancerous cells. The orally administered medication shall be provided at a cost to the covered person not to exceed the coinsurance percentage or the copayment amount as is applied to an intravenously administered or an injected cancer medication prescribed for the same purpose. A medication provided pursuant to this subsection (21) shall be prescribed only upon a finding that it is medically necessary by the treating physician for the purpose of killing or slowing the growth of cancerous cells in a manner that is in accordance with nationally accepted standards of medical practice, clinically appropriate in terms of type, frequency, extent site, and duration, and not primarily for the convenience of the patient, physician, or other health care provider. This subsection (21) does not require the use of orally administered medications as a replacement for other cancer medications. Nothing in this subsection (21) prohibits coverage for oral generic medications in a health benefit plan. Nothing in this subsection (21) prohibits a carrier from applying an appropriate formulary or other clinical management to any medication described in this subsection (21). For the purposes of this subsection (21), the treating physician for a patient covered under a health maintenance organization's health benefit plan shall be a physician who is designated by and affiliated with the health maintenance organization.

(b) A carrier shall not achieve compliance with this subsection (21) by imposing an increase in patient out-of-pocket costs with respect to anticancer medications used to kill or slow the growth of cancerous cells covered under a policy beyond the modifications permitted pursuant to section 10-16-201.5 (8).

**Source:** L. 92: Entire article R&RE, p. 1621, § 1, effective July 1; (4)(a) amended, p. 1499, § 32, effective July 1; (4) amended, p. 1752, § 7, effective July 1. L. 93: (5)(h) added, p. 956, § 2, effective May 28; (10) added, p. 2090, § 1, effective June 9. L. 94: (1.5), (6.5), (6.7) added and (6) amended, p. 1591, § 1, effective July 1; (5)(a), (5)(b)(I), (6), (8)(a), (8)(c), (8)(d), (9)(a)(I), (9)(b)(II), (9)(b)(III), and (9)(c) amended, pp. 2724, 2636, 2604, §§ 321, 77, 2, effective July 1. L. 95: IP(4)(a), (4)(a)(II), (4)(a)(III), and (4)(b) amended, p. 486, § 1, effective May 16; (11) added, p. 590, § 1, effective May 22; (10) amended, p. 1389, § 1, effective June 5. L. 96: (1)(a) and (1)(b) amended, p. 123, § 1, effective August 7. L. 97: (7)(a)(I)(A) amended, p. 1131, § 3, effective May 28; (5.5) added, p. 193, § 1, effective January 1, 1998. L. 98: (1)(b) RC&RE and (3)(a) amended, pp. 52, 53, §§ 1, 2, effective March 23; (5)(b)(II), (5)(b)(III), and (7)(a)(I)(B) amended, p. 1157, § 27, effective July 1; (13) added, p. 329, § 2, effective July 1; (12) added, p. 472, § 2, effective September 1; (6)(c) and (6)(d) amended, p. 1391, § 22, effective February 1, 1999. L. 99: (1)(c)(I) and (1)(c)(II)(A) amended and (1)(g) and (1.7) added, pp. 1045, 1046, §§ 1, 2, effective January 1, 2000. L. 2000: (14) added, p. 1588, § 1, effective January 1, 2001. L. 2001: (5.5)(a)(I) amended, p. 984, § 1, effective August 8; (1)(c)(I) amended and (1)(c)(III) added, p. 931, § 1, effective January 1, 2002. L. 2003: (8)(a)(II) amended, p. 700, § 5, effective July 1; (15) added, p. 1774, § 9, effective July 1. L. 2004: (5)(c) amended, p. 981, § 4, effective August 4. L. 2006: (6.7)(a), (6.7)(b), and (8)(a)(I) amended, p. 1998, § 34, effective July 1; (15) amended, p. 1077, § 3, effective January 1, 2007. L. 2007: (17) added, p. 1348, § 3, effective May 29; (16) added, p. 378, § 1, effective August 3; (1.3) added and (1.7)(a) amended, p. 889, § 3, effective January 1, 2008; (5.5)(a) amended and (5.5)(c) added, pp. 1369, 1370, §§ 1, 2, effective January 1,



2008; (15) amended, p. 451, § 3, effective January 1, 2008. **L. 2008:** (1.3)(a) amended, p. 1467, § 12, effective August 5; (6)(a) amended, p. 386, § 2, effective August 5; (7)(a)(I)(B) and (7)(b)(II)(B) amended and (7)(c) added, p. 425, § 24, effective August 5; (19) added, p. 2005, § 1, effective January 1, 2009; (15) amended and (18) added, p. 2074, § 2, effective January 16, 2009. **L. 2009:** (1.3)(a)(VI), (1.3)(b), and (1.3)(e) amended and (1.3)(d.5) and (1.3)(f) added, (HB 09-1237), ch. 216, p. 977, § 1, effective May 2; IP(5), (5)(e), (5)(f), (5)(g), and (5.5)(b) amended, (HB 09-1338), ch. 353, p. 1844, § 4, effective July 1; (1.5), (6)(a), and (6.7)(a) amended, (SB 09-292), ch. 369, p. 1944, § 16, effective August 5; (20) added, (HB 09-1059), ch. 214, p. 969, § 1, effective August 5; (1.5), (4), (15), and (18) amended, (HB 09-1204), ch. 344, p. 1802, § 2, effective January 1, 2010; (1.3)(g) and (1.4) added, (SB 09-244), ch. 391, pp. 2113, 2114, §§ 2, 3, effective July 1, 2010. **L. 2010:** (1.4)(a)(II)(A), (1.4)(a)(VIII), and (1.4)(a)(IX) amended, (HB 10-1260), ch. 403, p. 1978, § 50, effective July 1; (3)(a)(I) amended, (HB 10-1021), ch. 297, p. 1402, § 1, effective January 1, 2011; (18)(b)(III)(D) added, (HB 10-1252), ch. 226, p. 983, § 1, effective January 1, 2011; (21) added, (HB 10-1202), ch. 91, p. 310, § 2, effective January 1, 2011. **L. 2011:** IP(5) and (5)(b)(III) amended, (SB 11-187), ch. 285, p. 1326, § 65, effective July 1; (7)(a)(I)(A) amended, (HB 11-1186), ch. 97, p. 284, § 1, effective January 1, 2012.

**Editor's note:** (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

(2) The provisions of the "Workers' Compensation Act of Colorado" are contained in articles 40 to 47 of title 8.

(3) Amendments to (4)(a) by Senate Bill 92-12 were harmonized with amendments to (4) by Senate Bill 92-179.

(4) Amendments to (6) by Senate Bill 94-164 were harmonized with amendments by House Bill 94-1029.

(5) If the commission on mandated health insurance benefits twice fails to reach a quorum to consider the mandated health insurance coverage established by subsection (18) or concludes that the benefits of such mandated health insurance coverage outweigh its harms, amendments to subsections (15) and (18) shall take effect. (See L. 2008, p. 2077.) On January 16, 2009, the revisor of statutes received notice from the division of insurance that the commission was unable to reach a quorum.

(6) Subsection (1.5) was amended in Senate Bill 09-292. Those amendments were superseded by the amendment to subsection (1.5) in House Bill 09-1204, effective January 1, 2010.

**Cross references:** (1) For limitations concerning medical or health insurance under the "Colorado Medical Treatment Decision Act", see § 15-18-111; for section 607 of the "Employee Retirement Income Security Act of 1974", see 29 U.S.C. § 1167.

(2) For the legislative declaration contained in the 1993 act adding subsection (5)(h), see section 1 of chapter 211, Session Laws of Colorado 1993. For the legislative declaration contained in the 1998 act adding subsection (12), see section 1 of chapter 162, Session Laws of Colorado 1998. For the legislative declaration contained in the 2006 act amending subsection (15), see section 1 of chapter 236, Session Laws of Colorado 2006. For the legislative declaration contained in the 2008 act amending subsection (15) and adding subsection (18), see section 1 of chapter 411, Session Laws of Colorado 2008. For the legislative declaration contained in the 2009 act adding subsections (1.3)(g) and (1.4), see section 1 of chapter 391, Session Laws of Colorado 2009. For the legislative declaration contained in the 2009 act amending subsections (1.5), (4), (15), and (18), see section 1 of chapter 344, Session Laws of Colorado 2009. For the legislative declaration contained in the 2010 act adding subsection (21), see section 1 of chapter 91, Session Laws of Colorado 2010.

## ANNOTATION

**Insurance policy provision excluding disability coverage for normal pregnancies is discrimination on the basis of sex and violates § 29 of art. II, Colo. Const., and § 24-34-402.**

Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988) (decided prior to enactment of §§ 10-8-122.2, 10-16-114.6, and 10-17-131.6).

**10-16-104.3. Dependent health coverage for persons under twenty-five years of age - coverage for students who take medical leave of absence.** (1) All individual and group sickness and accident insurance policies providing coverage within the state by an entity subject to the provisions of part 2 of this article and all group health service contracts issued by an entity subject to the provisions of part 3 or 4 of this article that offer dependent coverage shall offer to the parent, for an additional premium if applicable, by rider or supplemental policy provision, the same dependent coverage for an unmarried child who is under twenty-five years of age, and is not a dependent as defined by section 10-16-102 if such child:

- (a) Has the same legal residence as the parent; or
  - (b) Is financially dependent upon the parent.
- (2) The additional premium, if applicable, for a rider or supplemental policy provision offered pursuant to subsection (1) of this section, shall be paid by the parent or the policyholder, at the discretion of the policyholder.

(3) (a) All individual and group sickness and accident insurance policies providing coverage within the state by an entity subject to the provisions of part 2 of this article and all group health service contracts issued by an entity subject to the provisions of part 3 or 4 of this article that provide dependent coverage to a child who is enrolled in a postsecondary educational institution shall not terminate coverage due to a medically necessary leave of absence before the date that is the earlier of:

- (I) One year after the first day of the medically necessary leave of absence; or
- (II) The date the coverage would otherwise terminate under the terms of the plan or health insurance coverage.

(b) For purposes of this subsection (3), “medically necessary leave of absence” means a leave of absence from a postsecondary educational institution or a change in enrollment of the dependent at the institution that:

- (I) Begins while the dependent is suffering from a serious illness;
- (II) Is medically necessary; and
- (III) Causes the dependent to lose student status for the purpose of dependent coverage.

**Source: L. 2005:** Entire section added, p. 1503, § 1, effective January 1, 2006.  
**L. 2009:** (3) added, (HB 09-1338), ch. 353, p. 1844, § 5, effective July 1.

**10-16-104.4. Child-only plans - legislative declaration - open enrollment - reporting requirements - repeal.** (1) As a condition of issuing coverage in the individual market, a carrier shall issue at least one child-only plan. The carrier shall issue every child-only plan pursuant to this section. A carrier shall accept an application for child-only plan coverage only during the enrollment periods outlined in this section unless the application is received within thirty days after a qualifying event.

(2) (a) Except as specified in paragraph (b) of subsection (3) of this section, there shall be two open enrollment periods each year during which carriers shall accept applications for child-only plan coverage. The first open enrollment period shall begin on the first of the month closest to ninety days after April 29, 2011. In each year thereafter, the open enrollment periods shall be in January and July. Each period must last one month and must be followed by a thirty-day waiting period for the child-only plans to take effect.

(b) During any period of open enrollment, carriers shall offer child-only plan coverage to all applicants under nineteen years of age on a guaranteed-issue basis.

(c) Each carrier shall continuously and prominently display, on its web site, notice of each open enrollment period and instructions on how to enroll a child in a child-only plan, including information regarding the ability to enroll due to a qualifying event. Each carrier shall also provide a link to the public programs administered by the department of health care policy and financing so that individuals considering enrolling in child-only plans have access to eligibility information for the public programs.

(3) (a) A carrier may cancel coverage for a dependent in the individual market if the parent subscriber cancels his or her individual coverage. The carrier shall allow the dependent to apply for child-only plan coverage during the next open enrollment period with no surcharge.



(b) A carrier may deny coverage to an applicant for enrollment in a child-only plan if other creditable coverage is available. For purposes of this paragraph (b), “creditable coverage” does not include eligibility for a high-risk pool insurance plan, but includes current enrollment in a high-risk pool insurance plan.

(c) A carrier may impose a surcharge for up to twelve months on an individual who enrolls in a child-only plan if the individual was previously enrolled in a child-only plan, subsequently dropped the coverage, and the lapse in coverage is greater than sixty-three days. The surcharge may be up to an additional fifty percent of the amount that would be charged for the same child demonstrating continuous coverage.

(4) Each carrier that participates in the individual market in Colorado shall submit to the commissioner the following information at the time the carrier submits the information required in section 10-16-111 (4) (a):

- (a) The number of applicants for a child-only plan;
  - (b) The number of individuals enrolled in a child-only plan; and
  - (c) The number of applicants denied enrollment in a child-only plan and the reasons for the denials.
- (5) Federal grant moneys shall be used to implement this section.
- (6) This section is repealed, effective January 1, 2014.

**Source: L. 2011:** Entire section added, (SB 11-128), ch. 133, p. 468, § 3, effective April 29.

**Cross references:** For the legislative declaration in the 2011 act adding this section, see section 1 of chapter 133, Session Laws of Colorado 2011.

**10-16-104.5. Autism - treatment - not mental illness.** (1) Any sickness and accident insurance policy providing indemnity for disability due to sickness issued by an entity subject to the provisions of part 2 of this article and any individual policies issued by an entity subject to the provisions of part 3 or 4 of this article which provide coverage for autism shall provide such coverage in the same manner as for any other accident or sickness, other than mental illness, otherwise covered under such policy.

(2) Nothing in this section shall mandate or be construed or interpreted to mandate that any individual policy must provide coverage for autism.

(3) Nothing in this section shall prohibit or prevent a person with an autism spectrum disorder from receiving mental health benefits in his or her health benefit plan.

**Source: L. 93:** Entire section added, p. 956, § 3, effective May 28. **L. 2009:** Entire section amended, (SB 09-244), ch. 391, p. 2118, § 4, effective July 1, 2010.

**Cross references:** For the legislative declaration contained in the 1993 act enacting this section, see section 1 of chapter 211, Session Laws of Colorado 1993. For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 391, Session Laws of Colorado 2009.

**10-16-104.6. Off-label use of cancer drugs.** (1) A health benefit plan that provides coverage for prescription drugs shall not limit or exclude coverage for any drug approved by the United States food and drug administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States food and drug administration for the treatment of the specific type of cancer for which the drug is prescribed if:

- (a) The drug is recognized for treatment of that cancer in the authoritative reference compendia as identified by the secretary of the United States department of health and human services; and
- (b) The treatment is for a covered condition.

**Source: L. 2010:** Entire section added, (HB 10-1355), ch. 229, p. 989, § 1, effective August 11.

**10-16-104.7. Substance abuse - court-ordered treatment coverage.** (1) Any individual or group health benefit plan delivered or issued for delivery within this state by an entity subject to the provisions of part 2, 3, or 4 of this article that provides coverage for substance abuse treatment shall provide coverage for substance abuse treatment regardless of whether the treatment is voluntary or court-ordered as a result of contact with the criminal justice or legal system. The health benefit plan shall only be required to provide coverage for benefits that are medically necessary and otherwise covered under the plan. Such coverage shall be subject to copayment, deductible, and policy maximums and limitations. Health benefit plans issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this section shall be covered benefits only if the services are deemed medically necessary and are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(2) Nothing in this section shall mandate or be construed to mandate that any health benefit plan must provide coverage for substance abuse treatment.

**Source: L. 2002:** Entire section added, p. 750, § 1, effective January 1, 2003.

**10-16-104.8. Mental health services coverage - court-ordered.** (1) An individual or group health benefit plan delivered or issued for delivery within this state by an entity subject to the provisions of part 2, 3, or 4 of this article that provides coverage for mental health services shall provide coverage for mental health services regardless of whether the services are voluntary or court-ordered as a result of contact with the criminal justice or juvenile justice system. The health benefit plan shall be required to provide coverage only for benefits that are medically necessary and otherwise covered under the plan. Such coverage shall be subject to applicable in- or out-of-network copayment, deductible, and policy maximums and limitations. The court order for mental health services shall not mandate the type of mental health services or the length and frequency of treatment that is to be covered by the health benefit plan. The health benefit plan shall only be responsible for those benefits that are covered by the health benefit plan and not those that are court-ordered that exceed the scope of benefits as provided by the health plan. Determination of medically necessary mental health services shall be made by the health benefit plan based on the submitted clinical treatment plan from a provider who is designated by and affiliated with the health benefit plan. Health benefit plans issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this section shall be covered benefits only if the services are deemed medically necessary and are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(2) Nothing in this section shall mandate or be construed to mandate that a health benefit plan provide coverage for mental health services.

(3) For purposes of this section, "mental health services" includes treatment for mental illness as described in section 10-16-104 (5) and treatment for biologically based mental illness as described in section 10-16-104 (5.5).

(4) For purposes of this section, "mental health services" does not include services that are outside the scope of the contract. Such mental health services that are outside the scope of the contract may include: Services that are custodial or residential in nature, probation assessments, testing for ability, aptitude, or intelligence, or performing evaluations, such as placement evaluations, custody evaluations, reunification assessments, or community risk assessments for any purpose other than mental health treatment.

**Source: L. 2006:** Entire section added, p. 159, § 1, effective March 31.

**10-16-104.9. Geographic areas for small employers.** (1) The commissioner shall promulgate a rule concerning geographic case characteristics, which may include metropolitan statistical areas for small employers. In promulgating such rule, the commissioner shall take testimony from all interested parties, including, but not limited to, consumer



advocates and consumers, insurers, health care providers, the state demographer, and producers. The rule shall include, without limitation, the following features:

(a) If the rule establishes separate geographic areas, in rate filings to the commissioner, a carrier shall be required to show that rates reflect a relativity to rates for other areas in the state and that rates and relativities are not excessive, inadequate, or unfairly discriminatory in such geographic areas;

(b) The rule shall contain a determination of the appropriate population base for statistical reliability in determining geographic areas or metropolitan statistical areas;

(c) (I) The rule shall provide justifications of why any separate geographic areas, which may include metropolitan statistical areas, serve the public interest in regard to ensuring that premium rates for different geographic areas of the state are not excessive, inadequate, or unfairly discriminatory;

(II) If the commissioner determines that metropolitan statistical areas are no longer the best method for addressing geographic case characteristics, the commissioner shall provide detailed justifications concerning the separate geographic areas, in connection with which the commissioner shall make public the impact the geographic case characteristics may have on insurance premiums for the separate geographic areas; and

(d) In adopting such rule, the commissioner may consider the cost of health care in a geographic area, experience of health care of any separate geographic area, and information including actuarial opinions or certifications and set loss ratios for loss ratio guarantees submitted by small employer carriers pursuant to section 10-16-107 (1). The cost of health care and experience and the population that may be served may be a consideration when determining whether separate geographic case characteristics are necessary, but shall not be the sole factors of separate geographic case characteristics, nor shall it compromise the public interest of insureds and potential insureds of this state.

**Source: L. 2002:** Entire section added, p. 1294, § 7, effective June 7. **L. 2003:** (1)(c)(I) amended, p. 1988, § 21, effective May 22.

**Editor's note:** This section was originally enacted as § 10-16-104.7 in House Bill 02-1003 but has been renumbered on revision for ease of location.

**10-16-105. Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic health benefit plans - rules.** (1) Notwithstanding any other provision of this article, the mandatory coverage provision for mental health coverage as specified in section 10-16-104 (5) shall not apply to any small employer who has not provided group sickness and accident insurance to employees after July 1, 1989, or to any small employer who has provided group sickness and accident insurance from a person or entity licensed pursuant to section 10-3-903.5 that did not include mental health coverage after July 1, 1989; except that any small employer who is not required to provide the mental health coverage specified in section 10-16-104 (5) shall be offered the opportunity to purchase such coverage.

(2) (a) Where a small group sickness and accident insurer subject to the provisions of part 2 of this article or an entity subject to the provisions of part 3 or 4 of this article elects not to provide mandatory coverage provisions pursuant to subsection (1) of this section such insurer or entity shall disclose to an insured, in a form and manner prescribed by the commissioner, the services and benefits not covered as a result of this election and the estimated amount of premium reduced by eliminating such coverage.

(b) Such disclosure notice shall be given in writing to all interested policyholders and certificate holders as part of the sales and marketing materials before the insurer or entity approves an application for insurance from an insured and shall contain the following statement: "Interested policyholders, certificate holders, and enrollees are hereby given notice that this small group policy does not cover all the health services and benefits which the Colorado Revised Statutes usually require group plans to cover."

(c) Such disclosure notice shall reproduce the exact language of the Colorado Revised Statutes with which the policy does not comply and specify what the small group policy does cover, if anything, in lieu of the mandatory coverage provisions.

(3) A small group sickness and accident insurance plan, small group plan, or small group policy shall be renewable to all eligible employees and dependents at the option of the small employer, except as allowed pursuant to section 10-16-201.5.

(4) (Deleted by amendment, L. 97, p. 633, § 4, effective May 1, 1997.)

(5) Each small group sickness and accident insurer or other entity shall make reasonable disclosure in solicitation and sales materials provided to small employers the following information in a form and manner prescribed by the commissioner and upon request of any such small employer shall provide such information in detail:

(a) How premium rates for a specific employer are established or adjusted;

(b) The provisions concerning the insurer's or other entity's right to, and the frequency with which the insurer or other entity may, change premium rates and the factors, including case characteristics, which affect changes in premium rates;

(c) (Deleted by amendment, L. 2004, p. 981, § 5, effective August 4, 2004.)

(d) The provisions relating to renewability of coverage;

(e) The provisions of such coverage relating to any preexisting condition exclusion;

(f) How to access the benefits and premiums available under all health benefit plans for which the employer is qualified; and

(g) (I) That the small employer purchasing any health benefit plan other than a basic plan pursuant to subparagraph (I), (III), or (IV) of paragraph (b) of subsection (7.2) of this section must pay for all of the mandated benefits pursuant to section 10-16-104 and that these mandates include mandatory, nonwaivable coverages for newborn, maternity, pregnancy, childbirth, complications from pregnancy and childbirth, early intervention services, therapies for congenital defects and birth abnormalities, low-dose mammography, mental illness, biologically-based mental illness, the availability of alcoholism treatment, the availability of hospice care, prostate cancer screening, child health supervision, hospitalization and general anesthesia for dental procedures for dependent children, diabetes, and prosthetic devices.

(II) That a small employer purchasing a basic health benefit plan described in subparagraph (I), (III), or (IV) of paragraph (b) of subsection (7.2) of this section is waiving coverage for low-dose mammography screening, mental illness, prostate screening, hospitalization and general anesthesia for dental procedures for children, and the availability of treatment for alcoholism.

(6) Each small group sickness and accident insurer or other entity shall file with the commissioner a complete and detailed description of its rating practices and renewal underwriting practices in a form and manner prescribed by the commissioner, and each such insurer shall maintain information and documentation that demonstrates that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles. This subsection (6) shall not apply to nondeveloped rates, including, but not limited to, rates for medicaid, medicare, and the children's basic health plan, as defined by the commissioner.

(6.5) Each small employer carrier shall file with the commissioner annually, on or before March 1, an actuarial certification certifying that the small employer carrier is in compliance with the provisions of subsections (8), (8.5), and (13) to (15) of this section and that the rating methods of the small employer carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the commissioner. A copy of the certification shall be retained by the small employer carrier at its principal place of business.

(6.6) The information and documentation described in subsection (6) of this section shall be confidential as determined by the commissioner. Any information not determined confidential shall be public when filed.

(7) An individual, corporation, association, partnership, or any other entity engaged in the health insurance business subject to this section shall not request or require from a small group applying for coverage, or from an individual in a small group applying for coverage, medical information going back more than five years before the date of application. Medical information that is more than five years old on any of the enrollee members of a small group shall not be used by the insurer in underwriting or setting premiums for the group. Nothing in this subsection (7) shall preclude a small group health insurer subject to the provisions



of part 2 of this article from asking about the current health status of any of the individuals in a group applying for coverage or from using such information on current health status to underwrite or set premiums for the group as provided by law.

(7.2) The commissioner shall promulgate rules to implement a basic health benefit plan and a standard health benefit plan to be offered by each small employer carrier as a condition of transacting business in this state. The commissioner shall survey small group carriers annually to determine the range of health benefit plans available. The commissioner shall implement a basic plan that approximates the lowest level of coverage offered in small group health benefit plans. A basic health benefit plan may be based on the latest medical evidence. The commissioner shall implement a standard plan that approximates the average level of coverage offered in small group health benefit plans. In determining levels of coverage, the commissioner shall consider factors such as coinsurance, copayments, deductibles, out-of-pocket maximums, and covered benefits. The commissioner shall amend the rules as necessary to implement the basic and standard health benefit plans. The rules shall be in conformity with article 4 of title 24, C.R.S., and shall incorporate the following standard health benefit plan design described in paragraph (a) of this subsection (7.2) and the various options for the basic health benefit plan design described in paragraph (b) of this subsection (7.2):

(a) The standard health benefit plan shall reflect the benefit design of common plan offerings in the small group market and may reflect a plan design that has a deductible amount of two thousand five hundred dollars for which the covered person is responsible after the first one thousand dollars of coverage has been provided by an employer in a manner similar to a personal care account.

(b) (I) A basic health benefit plan may reflect a basic health benefit plan that does not include coverage pursuant to the mandatory coverage provisions of section 10-16-104 (5), (9), (10), (12), and (18).

(II) A basic health benefit plan may reflect a health benefit plan that is a high deductible plan that would qualify for a health savings account pursuant to 26 U.S.C. sec. 223. A carrier may apply deductible amounts for mandatory health benefits for mammography, prostate screening, child supervision services, or prosthetic devices pursuant to section 10-16-104 (10), (11), (14), and (18) (b) (III) if such mandatory benefits are not considered by the federal department of treasury to be preventive or to have an acceptable deductible amount.

(III) A basic health benefit plan may reflect a basic health benefit plan that does not include coverage pursuant to the mandatory coverage provisions of section 10-16-104 (5), (9), (10), (12), and (18) and is a high deductible plan that would qualify for a health savings account pursuant to 26 U.S.C. sec. 223. A carrier may apply deductible amounts for mandatory health benefits for child supervision services or prosthetic devices pursuant to section 10-16-104 (11) and (14) if such mandatory benefits are not considered by the federal department of treasury to be preventive or to have an acceptable deductible amount.

(IV) On and after January 1, 2009, a basic health benefit plan may reflect a medical evidence-based health benefit plan that:

(A) Does not include coverage pursuant to the mandatory coverage provisions of section 10-16-104 (5), (9), (10), (12), and (18); except that a basic health benefit plan issued pursuant to this subparagraph (IV) shall include coverage for mammography as specified in section 10-16-104 (18) (b) (III);

(B) Is a high deductible plan that would qualify for a health savings account pursuant to 26 U.S.C. sec. 223;

(C) Covers limited prevention and screening based on the latest medical evidence embodied in recommendations of an independent panel of experts in primary care and prevention that systematically reviews the evidence of effectiveness and develops recommendations for clinical preventive services; except that a carrier may apply deductible amounts for mandatory health benefits for mammography, child supervision services, or prosthetic devices pursuant to section 10-16-104 (11), (14), and (18) (b) (III) if such mandatory benefits are not considered by the federal department of treasury to be preventive or to have an acceptable deductible amount;

(D) Covers limited elective inpatient and surgical care;

(E) Covers limited medications used primarily for cost-effective chronic disease management;

(F) Covers maternity care.

(c) Notwithstanding any provision of law to the contrary, a small employer carrier may offer and a small employer may accept or reject coverage for employees' domestic partners and their dependents or for employees' designated beneficiaries and their dependents under a standard or basic health benefit plan.

(7.3) (a) Except as otherwise provided in this subsection (7.3), effective January 1, 1995, every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to such small employers the choice of a basic health benefit plan or a standard health benefit plan. Effective July 1, 1997, every small employer carrier shall also offer to small employers a choice of all the other small group plans the carrier markets in Colorado; except that this requirement shall not apply to a health benefit plan offered by a carrier if such plan is made available in the small group market only through one or more bona fide association plans and except as provided in paragraph (i) of this subsection (7.3).

(b) (I) to (III) (Deleted by amendment, L. 2004, p. 981, § 5, effective August 4, 2004.)

(IV) (Deleted by amendment, L. 2001, p. 1167, § 1, effective July 1, 2001.)

(V) Notwithstanding the provisions of paragraph (a) of this subsection (7.3), no small employer carrier is required to offer coverage or accept applications pursuant to this section from business groups of one if the commissioner finds that acceptance of an application would place the small employer carrier in a financially impaired condition. In addition, a small employer carrier that has not offered coverage or accepted applications pursuant to this subparagraph (V) shall not offer coverage or accept applications until a determination by the commissioner that the small employer carrier is no longer financially impaired.

(c) (I) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan, except as provided in paragraph (i) of this subsection (7.3), to any eligible small employer that applies for such health benefit plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan that are consistent with this article. A small employer carrier shall also issue any of its other small employer plans to any small employer that applies for such a plan; except that this requirement shall not apply to a business group of one where the business group of one does not meet the carrier's normal and actuarially-based underwriting criteria. The requirements of this paragraph (c) shall not apply to a health benefit plan offered by a carrier if such plan is made available in the small group market only through one or more bona fide association plans.

(II) and (III) (Deleted by amendment, L. 2004, pp. 762, 981, §§ 1, 5, effective July 1, 2004, and August 4, 2004.)

(IV) If a small employer carrier offers a health benefit plan with a deductible of at least one thousand five hundred dollars, the small employer carrier shall provide to each covered person a clear and understandable disclosure in the health benefit plan contract or materials indicating:

(A) The amount of the deductible;

(B) The policies related to copayments, deductibles, and cost-sharing arrangements.

(d) Notwithstanding the requirements of paragraph (c) of this subsection (7.3), no small employer carrier is required to offer coverage or accept applications pursuant to this section if the commissioner finds that acceptance of an application would place the small employer carrier in a financially impaired condition. In addition, a small employer carrier that has not offered coverage or accepted applications pursuant to this paragraph (d) shall not offer coverage or accept applications until a determination by the commissioner that the small employer carrier is no longer financially impaired.

(d.5) and (e) (Deleted by amendment, L. 97, p. 633, § 4, effective May 1, 1997.)

(f) Basic and standard health benefit plans offered by a small employer carrier shall be subject to the certification requirements of section 10-16-107.2.

(g) The commissioner may, at any time after providing notice and an opportunity for a hearing to a small employer carrier, disapprove the continued use by the small employer



carrier of the basic health benefit plan and the standard health benefit plan on the grounds that such plans do not meet the requirements of this article.

(h) (Deleted by amendment, L. 97, p. 633, § 4, effective May 1, 1997.)

(i) In lieu of accepting applications from and guarantee issuing the basic and standard plans to business groups of one year round, small employer carriers may limit their issuance of coverage as provided in this paragraph (i). A small employer carrier may establish open enrollment periods for guarantee issued basic or standard plan applications from business groups of one for a period of thirty-one days following the birth date of the person qualifying as a business group of one. A small employer carrier may establish annual open enrollment periods for business groups of one for thirty-one days following the birth date of the applicant and may limit issuance of a basic health benefit plan and a standard health benefit plan to such thirty-one-day period. Carrier marketing and sales materials for business groups of one shall clearly disclose the open enrollment period. If a person qualifying as a business group of one applies for coverage under a plan other than the basic or standard plan, and if the business group of one is denied coverage as provided by law, then the small employer carrier shall offer the business group of one a choice of coverage under the basic or standard plan during the applicant's appropriate open enrollment period. A small employer carrier shall accept applications from business groups of one for a basic or standard plan through the thirty-first day after the birth date of the person qualifying as a business group of one. The date upon receipt of the signed application and the applicant's birth date shall be used in determining whether the thirty-one day open enrollment applies to a particular person qualifying as a business group of one. Eligible dependents of such person may also be covered at the same time as the applicant. Small employer carriers that use open enrollment periods shall also accept applications from business groups of one and issue a basic or standard plan as provided by law if such applications are submitted within thirty-one days of any one of the following events:

(I) A person qualifying as a business group of one exhausts state or federal continuation coverage;

(II) The date a person initially meets the requirements of section 10-16-102 (6) and whose birth date is more than thirty-one days after so doing; or

(III) A person qualifying as a business group of one involuntarily loses other creditable coverage. This subparagraph (III) shall not apply in cases of failure to pay premium, fraud, or a voluntary decision on the part of such person to terminate other creditable coverage.

(7.4) (a) Except as provided in paragraph (d) of this subsection (7.4), the requirements used by a small employer carrier to determine whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(b) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements by the size of the small employer group and by product.

(c) In applying minimum participation requirements with respect to an employer, a small employer carrier shall not consider employees or dependents who have creditable group coverage or individual coverage that has been consistently maintained and that was in force prior to the individual's eligibility for group coverage under an existing group plan when determining whether the applicable percentage of participation is met. However, a small employer carrier may consider employees or dependents of such employer who have coverage under another health benefit plan that is sponsored by such small employer.

(d) A small employer carrier shall not increase any requirement for minimum employee participation or for minimum employer contribution with respect to a small employer at any time after such employer has been accepted for coverage.

(7.5) (a) Effective January 1, 2004, if a small employer carrier offers coverage to a small employer, such small employer carrier shall offer the group coverage to all of the eligible employees of the small employer and their dependents. A small employer carrier shall not offer coverage to only certain eligible individuals in a small employer group or to

only part of the group, except in the case of late enrollees as provided in section 10-16-118 (1) (c).

(b) A small employer carrier shall not modify a basic health benefit plan or a standard health benefit plan with respect to a small employer or any eligible employee or dependent through a rider, endorsement, or otherwise, if the effect of such modification is to restrict or exclude coverage for certain diseases or medical conditions that are otherwise covered by such plan.

(7.6) (a) No small employer carrier is required to accept applications from or offer coverage pursuant to paragraph (a) of subsection (7.3) of this section:

(I) To a small employer, where the employer is not physically located in the small employer carrier's established geographic service area, except as provided in section 10-16-704 (2);

(II) To an employee, when the employee does not work or reside within the small employer carrier's established geographic area; or

(III) Within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it does not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier that cannot offer coverage pursuant to subparagraph (III) of paragraph (a) of this subsection (7.6) may not offer coverage in the applicable area to any new employer group with more than fifty employees or to any small employer group until the later of one hundred eighty days after each such refusal or the date on which the small employer carrier notifies the commissioner that it has regained capacity to offer health benefit plans to small employer groups.

(8) (a) The premium rate charged during a rating period to small employers shall be based on a single, same index rate, applicable to all small employers, adjusted for case characteristics and coverage.

(b) (Deleted by amendment, L. 2004, p. 981, § 5, effective August 4, 2004.)

(c) (I) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers.

(II) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(d) For the purposes of this subsection (8), a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision if the restriction of benefits to network providers results in substantial differences in claim costs.

(e) The small employer carrier shall not use case characteristics other than age, geographic area, and family size, nor shall it use any other rating factors except as provided in this subsection (8) and subsections (13) to (15) of this section.

(f) The commissioner may establish rules to implement the provisions of this subsection (8) and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection (8) and subsections (13) to (15) of this section, including rules that:

(I) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans; and

(II) Prescribe the manner in which case characteristics that are consistent with section 10-16-104.9 may be used by small employer carriers.

(8.1) and (8.2) (Deleted by amendment, L. 2004, p. 981, § 5, effective August 4, 2004.)

(8.5) (a) For small group health benefit plans issued to or renewed for a small employer on or after January 1, 2009:

(I) (A) An adjustment in rates for standard industrial classification may be made but shall not be charged to the individuals under the plan;

(B) A carrier may adjust rates uniformly for all individuals under a small employer policy based on tobacco use. A small employer carrier may apply an increase or decrease of up to fifteen percent rating adjustment to particular individuals related to tobacco use.



Any individual who does not qualify for a lower rate may be offered the option of participating in a bona fide wellness program as defined under the federal "Health Insurance Portability and Accountability Act of 1996", as amended. Any individual who participates in a bona fide wellness program may be allowed the lower rate. The availability of a tobacco rating adjustment and any bona fide wellness program shall be disclosed to each potential insured. The provisions of this sub-subparagraph (B) shall only be applicable if allowed under federal law.

(II) For a small employer's policy, adjustments made pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (a) may be made but shall not result in a rate for the small employer that deviates from the carrier's filed rate by more than the amounts set forth in the following schedule:

(A) On and after September 1, 2003, until September 29, 2004, decreases more than fifteen percent from the carrier's filed rate;

(B) On and after September 30, 2004, increases more than ten percent from or decreases more than twenty-five percent from the carrier's filed rate;

(C) Repealed.

(III) Any adjustments pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (a) shall be applied uniformly to the rates charged for all individuals under the small employer policy, and any adjustments pursuant to sub-subparagraph (B) of subparagraph (I) of this paragraph (a) may be applied to individuals within the small group;

(IV) A small employer carrier shall not increase or decrease rates based on the size of a small employer group; and

(V) A small employer carrier may make an upward adjustment to a small business group's renewal premium, not to exceed fifteen percent annually, due to standard industrial classification or tobacco use for all individuals under the small employer policy pursuant to subparagraph (I) of this paragraph (a).

(b) A small employer carrier offering a health benefit plan to a small employer pursuant to paragraph (a) of this subsection (8.5) shall be required to demonstrate to the commissioner in rate filings that premium rates are not excessive, inadequate, or unfairly discriminatory.

(c) The small employer carrier shall not use case characteristics other than age, geographic area, family size, smoking status, and standard industrial classification on that small employer carrier's health benefit plan, industry, and plan design.

(8.7) (a) The commissioner shall evaluate how subsection (8.5) of this section affects the small group market. Specifically, the commissioner shall evaluate the impact of the following:

(I) Rating flexibility based on application of rating flexibility on small business groups of one to small employers with no more than fifteen employees, as compared to the impact on small employers with sixteen or more employees;

(II) Rating flexibility on the size and stability of the small group market; and

(III) (Deleted by amendment, L. 2007, p. 1752, § 2, effective January 1, 2009.)

(IV) The number of small employer groups whose premiums are at or below the index rate and the number of small employer groups whose premiums are above the index rate.

(b) The commissioner shall submit a report of the evaluation pursuant to this subsection (8.7) to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or their successor committees, no later than March 15, 2011. The commissioner shall consult with interested parties, including but not limited to employers and employees in the small group market, and survey the small employer carriers authorized to conduct business in Colorado. The report, to the greatest extent practicable, shall include an analysis of:

(I) The small group insurance market with trend information, availability of coverage, average cost of coverage, and number of lives covered in the small group market;

(II) Any cost-shifting that may occur because of reimbursement rates from publicly funded health coverage plans; and

(III) Any other factor affecting the growth or decline of the small group market.

(9) and (10) Repealed.

(11) (Deleted by amendment, L. 2006, p. 1075, § 2, effective July 1, 2006.)

(12) In the case of an employer that was not in existence throughout the preceding calendar quarter, the determination of whether such employer is a small or large employer shall be based on the average number of employees that is reasonably expected such employer will employ on business days in the current calendar year.

(13) (a) (I) On and after January 1, 2004, a small employer may be subject to premium adjustments for health status up to thirty-five percent above the modified community rate for a period no greater than twelve months if the small employer has, at any time during the past twelve months, purchased health benefit coverage as a small employer that is either self-funded or insured through a health benefit plan that is not a small group plan, except for health benefit plans sponsored by an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., pursuant to sub-subparagraphs (D) to (F) of this subparagraph (I). The provisions of this subparagraph (I) shall not apply to:

(A) A small employer that has not previously sponsored a health benefit plan for its employees;

(B) A self-employed person who has not previously qualified as a business group of one;

(C) A small employer that meets the criteria of paragraph (b) of this subsection (13);

(D) A small employer that had previously participated in a health benefit plan through an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., if the small employer's coverage through the employee leasing company was subject to the small group laws;

(E) A small employer that had previously participated in a health benefit plan sponsored by an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., and the small employer is no longer a party to an employee leasing company;

(F) A small employer that is currently using the services of an employee leasing company, as defined in section 8-70-114 (2) (a) (V), C.R.S., that does not offer a health benefit plan as part of its employee leasing services or, because of an action by an insurer, has ceased offering a health benefit plan to employees assigned to client locations pursuant to an employee leasing contract; or

(G) A small employer that, due to a change in employment status within the state or a change in corporate structure motivated by a change in business purpose that is unrelated to health care, is no longer eligible to participate in a multiple employer welfare arrangement, and that, currently or immediately prior to seeking coverage in the small group market, participates or participated in a multiple employer welfare arrangement pursuant to part 9 of this article and that is fully insured by a licensed insurer as defined by section 10-16-901 (2).

(II) For the purposes of determining whether the small employer is eligible for the premium adjustment, the carrier may require that the small employer submit either of the following:

(A) Evidence of the most recent health benefit coverage; or

(B) In the circumstances in which the small employer does not currently sponsor a small group plan, a signed affidavit confirming that the small employer has never sponsored a group policy at any time during the past twelve months prior to applying for small group coverage, and acknowledging that failure to report such previous group coverage may result in the application of a premium adjustment for health status of up to thirty-five percent above the modified community rate for a small employer carrier.

(b) A small employer who had purchased health benefit coverage from a small employer carrier and who discontinued health benefit coverage as a small employer prior to January 1, 2004, may obtain health benefit coverage from a small employer carrier without being subject to premium adjustments for health status prior to July 1, 2004.

(c) Small employer carriers may offer small group policies that include a premium discount not to exceed ten percent for those individuals that have refrained from smoking for more than twelve consecutive months prior to the effective date or renewal of the small group nonsmoker policy. Such nonsmoker discounts shall be for the subsequent policy year period. Proof of nonsmoking status may be requested by the carrier when the policy is issued or renewed.



(d) The premium adjustment for health status allowed pursuant to this subsection (13) shall only be used for the calculation of premium amounts and shall not be used by a small employer carrier as a basis of acceptance or rejection of health benefit coverage for a small employer. The premium adjustment for health status shall not apply to a group of more than fifty employees that subsequently becomes subject to small group coverage if such group has had no lapse of coverage greater than ninety days.

(14) (a) A small employer group whose small group insurance has been discontinued because of nonpayment of premiums or fraud may be subject to premium adjustments for health status of no more than thirty-five percent above the modified community rate for a small employer carrier when the small business group reapplies for coverage in the small group market. A small employer carrier may require the increased premium to apply to the small business group for a period no greater than twelve months.

(b) The premium adjustment for health status allowed pursuant to this subsection (14) shall only be used for the calculation of premium amounts and shall not be used by a small employer carrier as a basis of acceptance or rejection of health benefit coverage for a business group of one.

(15) On and after January 1, 2004, small employer groups who have not previously sponsored health benefit coverage shall not be subject to premium adjustments for health status pursuant to subsection (13) of this section.

(16) Repealed.

**Source:** **L. 92:** Entire article R&RE, p. 1634, § 1, effective July 1. **L. 94:** (8) amended and (6.5), (6.6), (7.2), (7.3), (7.4), (7.5), (7.6), (8.1), (8.2), (10), and (11) added, p. 1902, § 7, effective July 1. **L. 96:** (9) and (10) repealed, p. 1230, § 51, effective August 7. **L. 97:** (8)(a)(I) and (8)(a)(VII) amended and (8)(a)(X), (8)(a)(XI), and (8)(a)(XII) added, p. 210, § 4, effective April 8; (3) to (5), (7.3)(a), IP(7.3)(b)(I), (7.3)(c)(I), (7.3)(d.5), (7.3)(e), (7.3)(h), and (7.4)(c) amended and (12) added, p. 633, § 4, effective May 1. **L. 99:** (8)(a)(I), (8)(a)(VII), (8)(a)(X), and (8)(a)(XI) amended, p. 147, § 2, effective March 25; (7.3)(a) and (7.3)(c)(I) amended and (7.3)(b)(V) and (7.3)(i) added, pp. 226, 227, §§ 2, 3, effective August 4. **L. 2001:** (7.3)(b)(IV) and (11) amended, p. 1167, § 1, effective July 1; (7.4)(c) amended, p. 812, § 3, effective January 1, 2002. **L. 2002:** (7.2), (7.4)(c), (7.6)(a)(I), IP(8)(f), and (8)(f)(II) amended, p. 1291, § 3, effective January 1, 2003; IP(7.3)(c)(II) amended and (7.3)(c)(IV) added, p. 331, § 3, effective January 1, 2003. **L. 2003:** (8)(f)(II) amended, p. 1988, § 22, effective May 22; (5)(g), (8.5), and (8.7) added and (7.2) and (7.5)(a) amended, pp. 1778, 1775, §§ 11, 10, effective July 1; (8)(a)(VIII), (8)(e), and IP(8)(f) amended and (13), (14), and (15) added, p. 2691, § 1, effective January 1, 2004. **L. 2004:** (7.2)(b), (7.3)(c)(II), and (7.3)(c)(III) amended, p. 762, § 1, effective July 1; (5)(a), (5)(c), (5)(f), (6.5), (6.6), (7), (7.3)(b)(I), (7.3)(b)(II), (7.3)(b)(III), (7.3)(c), (7.3)(g), (8)(a), (8)(b), (8)(c)(I), (8)(e), (8.1), (8.2), and (8.5)(c) amended, p. 981, § 5, effective August 4. **L. 2005:** (7.2)(c) added, p. 1030, § 1, effective June 2; (13)(a)(I)(G) added, p. 421, § 2, effective January 1, 2006. **L. 2006:** (7.4)(b) amended, p. 223, § 1, effective March 31; (16) added, p. 1075, § 2, effective May 25; (7.6)(a)(I) amended, p. 1491, § 15, effective June 1; (11) amended, p. 1075, § 2, effective July 1; IP(7.2) and (7.2)(b) amended, p. 1075, § 2, effective January 1, 2007. **L. 2007:** IP(13)(a)(I) amended, p. 2052, § 109, effective June 1; (5)(g), (7.2)(b)(I), (7.2)(b)(III), and (7.2)(b)(IV)(A) amended, pp. 449, 450, §§ 1, 2, effective January 1, 2008; (5)(g)(I) amended, p. 892, § 4, effective January 1, 2008; (8.5)(a)(II)(C) added, p. 1754, § 3, effective January 1, 2008; (5)(a), (8)(e), IP(8.5)(a), (8.5)(a)(I)(A), (8.5)(a)(V), (8.5)(c), (8.7)(a)(I), (8.7)(a)(III), and (8.7)(b), amended, p. 1752, § 2, effective January 1, 2009. **L. 2008:** (6) and (6.6) amended, p. 2250, § 4, effective July 1; IP(7.2) amended, p. 386, § 3, effective August 5; IP(8.7)(b) amended, p. 1881, § 13, effective August 5; (7.2)(b)(I), (7.2)(b)(III), IP(7.2)(b)(IV), and (7.2)(b)(IV)(A) amended, p. 2076, § 3, effective January 16, 2009. **L. 2009:** (7.2)(c) amended, (HB 09-1260), ch. 107, p. 440, § 4, effective July 1; IP(13)(a)(I), (13)(a)(I)(D), (13)(a)(I)(E), and (13)(a)(I)(F) amended, (SB 09-292), ch. 369, p. 1944, § 17, effective August 5; (7.2)(b)(I), (7.2)(b)(II), (7.2)(b)(III), (7.2)(b)(IV)(A), and (7.2)(b)(IV)(C) amended, (HB 09-1204), ch. 344, p. 1806, § 4, effective January 1, 2010. **L. 2011:** (16) repealed, (SB 11-103), ch. 43, p. 112, § 2, effective March 21.

**Editor's note:** (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Section 8(1) of Senate Bill 06-036 provided that subsection (7.2)(b) is effective January 1, 2007; except that section 8(2)(c) of Senate Bill 06-036 provided that subsection (7.2)(b)(IV) is effective January 1, 2008.

(3) Amendments to subsection (5)(g)(I) by Senate Bill 07-004 and Senate Bill 07-078 were harmonized.

(4) If the commission on mandated health insurance benefits twice fails to reach a quorum to consider the mandated health insurance coverage established by section 10-16-104 (18) or concludes that the benefits of such mandated health insurance coverage outweigh its harms, amendments to subsections (7.2)(b)(I), (7.2)(b)(III), IP(7.2)(b)(IV), and (7.2)(b)(IV)(A) shall take effect. (See L. 2008, p. 2077.) On January 16, 2009, the revisor of statutes received notice from the division of insurance that the commission was unable to reach a quorum.

(5) Subsection (8.5)(a)(II)(C) provided for the repeal of subsection (8.5)(a)(II)(C), effective January 1, 2009. (See L. 2007, p. 1754.)

**Cross references:** For the legislative declaration contained in the 1996 act repealing subsections (9) and (10), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 1997 act amending subsections (8)(a)(I) and (8)(a)(VII) and enacting subsections (8)(a)(X), (8)(a)(XI), and (8)(a)(XII), see section 1 of chapter 77, Session Laws of Colorado 1997. For the legislative declaration contained in the 1997 act amending subsections (3) to (5), (7.3)(a), IP(7.3)(b)(I), (7.3)(c)(I), (7.3)(d.5), (7.3)(e), (7.3)(h), and (7.4)(c) and enacting subsection (12), see section 1 of chapter 154, Session Laws of Colorado 1997. For the legislative declaration contained in the 2002 act amending subsection IP(7.3)(c)(II) and enacting subsection (7.3)(c)(IV), see section 1 of chapter 117, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act enacting subsection (13)(a)(I)(G), see section 1 of chapter 127, Session Laws of Colorado 2005. For the legislative declaration contained in the 2006 act amending the introductory portion to subsection (7.2) and subsections (7.2)(b) and (11) and enacting subsection (16), see section 1 of chapter 236, Session Laws of Colorado 2006. For the legislative declaration contained in the 2008 act amending subsections (7.2)(b)(I), (7.2)(b)(III), the introductory portion to (7.2)(b)(IV), and (7.2)(b)(IV)(A), see section 1 of chapter 411, Session Laws of Colorado 2008. In 2008, subsections (6) and (6.6) were amended by the "Fair Accountable Insurance Rates Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008. For the legislative declaration contained in the 2009 act amending subsections (7.2)(b)(I), (7.2)(b)(II), (7.2)(b)(III), (7.2)(b)(IV)(A), and (7.2)(b)(IV)(C), see section 1 of chapter 344, Session Laws of Colorado 2009.

**10-16-105.2. Small employer health insurance availability program.** (1) (a) Except as provided in paragraphs (b), (c), and (d) of this subsection (1), this article shall apply to any health benefit plan that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(I) Any portion of the premium or benefit is paid by or on behalf of a small employer;

(II) An eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of a small employer for any portion of the premium;

(III) The health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the federal "Internal Revenue Code of 1986", as amended, except as provided in paragraph (d) of this subsection (1); or

(IV) The plan is marketed to individual employees through an employer or at a place of business, except as otherwise allowed by rule. The division of insurance shall promulgate a rule to allow, with the permission of or at the request of the employer:

(A) Agents to market health benefit plans through an employer or at an employer's place of business to such employer's ineligible employees;

(B) Small employer carriers to market individual health benefit plans through an employer or at an employer's place of business to such employer's ineligible employees and to dependents of eligible employees when the carrier has group coverage in place with the employer.

(b) The provisions of this article shall not apply to a multiple employer health trust, as set forth in section 10-3-903.5 (7) (b), or a multiple employer welfare arrangement, as set forth in section 10-3-903.5 (7) (c).



(c) (I) The provisions of this article concerning small employer carriers and small group plans shall not apply to an individual health benefit plan newly issued to a business group of one that includes only a self-employed person who has no employees, or a sole proprietor who is not offering or sponsoring health care coverage to his or her employees, together with the dependents of such a self-employed person or sole proprietor if, pursuant to rules adopted by the commissioner, all of the following conditions are met:

(A) As part of the application process, the carrier determines whether or not the applicant is a self-employed person who meets the definition of a business group of one pursuant to section 10-16-102 (6).

(B) If the applicant is a business group of one self-employed person, the carrier accepts or rejects such person and, if such person is applying for family coverage, accepts or rejects the entire family unless the applicant waives coverage for a family member who has other coverage in effect.

(C) If the carrier rejects an application for a business group of one self-employed person and the carrier does business in both the individual and small group markets, the carrier shall notify the applicant of the availability of coverage through the small group market and of the availability of small group coverage through the carrier.

(D) As part of its application form, an individual carrier requires a business group of one self-employed person purchasing an individual health benefit plan pursuant to this subparagraph (I) to read and sign a disclosure form stating that, by purchasing an individual policy instead of a small group policy, such person gives up what would otherwise be his or her right to purchase a business group of one standard, basic, or other health benefit plan from a small employer carrier for a period of three years after the date the individual health benefit plan is purchased, unless a small employer carrier voluntarily permits such person to purchase a business group of one policy within such three-year period. The disclosure form shall also briefly describe the factors used to set rates for the individual policy being purchased in comparison with the factors used to set rates for a business group of one small group policy. The individual carrier shall provide to the business group of one self-employed applicant a copy of the health benefit plan description form for the Colorado standard health benefit plan in addition to the description form for the individual plan being marketed. The disclosure form may be included within any other certification form that the carrier uses for the plan. The division of insurance shall make available a standard plan description form to individual carriers upon request.

(II) Nothing in this paragraph (c) shall preclude a business group of one from applying for small group coverage.

(III) For the purposes of this paragraph (c), an individual health benefit policy shall not include one or more short-term limited duration health insurance policies issued within six months before the date of application for group coverage.

(d) A plan shall not be subject to the small group provisions of this article if the premium for the plan is paid for through a section 125 plan or program of the federal "Internal Revenue Code of 1986", as amended, the employer makes no contribution to the section 125 plan or program, the employer does not have in place an employer-sponsored health benefit plan, and the employer does not pay for any portion of the premium or benefit paid.

(1.5) Notwithstanding any other provision of law, a small employer that does not have, and has not had in the previous twelve months, a small group health benefit plan providing coverage to its employees under this article may reimburse an employee, whether through wage adjustments or health reimbursement arrangements, for any portion of the premium for a health coverage plan.

(2) (a) Except as provided in paragraph (b) of this subsection (2), carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this article shall apply as if all health benefit plans delivered or issued for delivery to small employers in this state by such affiliated carriers were issued by one carrier.

(b) An affiliated carrier that is a health maintenance organization having a certificate of authority under this article may be considered to be a separate carrier for purposes of this subsection (2).

(c) The provisions of section 10-3-118 and part 7 of article 3 of this title shall apply if a small employer carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to small employers in this state.

(3) Pursuant to rules adopted by the commissioner, a small employer carrier may reject for coverage under a small group plan a business group of one self-employed person if, at the time of application for group coverage, the self-employed person has in place or, within the immediately preceding thirty days, has had in place an individual health benefit plan that meets the requirements of subparagraph (I) of paragraph (c) of subsection (1) of this section and has been in place for less than three years. An individual health benefit policy shall not include one or more short-term limited duration health insurance policies issued within six months before the date of application for group coverage.

(4) Notwithstanding any provision of law to the contrary, a carrier may decline to renew or reenroll a business group of one that has been terminated by the carrier for nonpayment of premiums. The time period during which the carrier may so decline shall extend for up to six months after the date of termination or until the next open enrollment period, whichever is greater.

**Source:** L. 2004: Entire section added, p. 986, § 6, effective August 4; (1)(c)(I)(A) amended, p. 1214, § 109, effective August 4. L. 2011: (1.5) added, (SB 10-019), ch. 78, p. 214, § 1, effective March 29.

**10-16-105.3. Health benefit plans - not prohibited.** (1) A carrier shall not be prohibited from offering to a small employer additional options of health benefit plans that:

(a) Provide for different benefits for insureds and dependents of such insureds covered by the same policy; and

(b) Encourage appropriate health care condition management based on clinical guidelines by providing case management benefits to covered persons.

**Source:** L. 2003: Entire section added, p. 1778, § 12, effective January 1, 2004.

**10-16-105.5. Individual health plans - federally eligible individual - limited guarantee issue.** (1) As used in this section, “federally eligible individual” means an individual:

(a) For whom, as of the date on which the individual seeks coverage, the aggregate of periods of creditable coverage is eighteen months or more and whose most recent prior creditable coverage was under a group health plan. As used in this section, “group health plan” means an employee welfare benefit plan as defined in 29 U.S.C. sec. 1002 (1) of the federal “Employee Retirement Income Security Act of 1974” to the extent that the plan provides health care services, including items and services paid for as health care services, to employees or their dependents directly or through insurance reimbursement or otherwise. A “group health plan” includes a government or church plan.

(b) Who is not eligible for coverage under a group health benefit plan, medicare, or medicaid and does not have other health benefit plan coverage;

(c) Whose most recent coverage was not terminated as a result of nonpayment of premiums or fraud; and

(d) Who did not turn down an offer of continuation coverage if it was offered and who subsequently exhausted such coverage.

(2) CoverColorado is hereby designated the state alternative mechanism for health care coverage of federally eligible individuals, in accordance with the federal “Health Insurance Portability and Accountability Act of 1996”. On and after July 1, 2001, every carrier offering individual health benefit plans in Colorado shall promptly provide written notice pursuant to section 10-8-521 to all federally eligible individuals who apply for individual health benefit plan coverage. CoverColorado shall accept for enrollment every federally eligible individual who applies for coverage within sixty-three days after termination of such individual’s prior coverage and shall not impose any preexisting condition exclusions



or limitations on the new coverage. The health care coverage offered by CoverColorado shall be comprehensive coverage, with benefits substantially the same as those otherwise offered to individuals eligible for CoverColorado. The premiums charged by CoverColorado shall be the same as the premiums otherwise charged to individuals eligible for CoverColorado and shall be subject to the limits set forth in section 10-8-512 (3).

(3) With respect to the provisions of subsection (2) of this section, a carrier that offers coverage in the individual market through a managed care plan may limit the individuals who may be enrolled to those that live, reside, or work within the service area of the plan. Such a carrier may deny coverage to eligible individuals if it demonstrates to the commissioner that it will not have the capacity to deliver services adequately to additional enrollees and it is applying this subsection (3) uniformly to individuals without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(4) A carrier may apply to the commissioner to suspend for a period of time its duty to issue coverage pursuant to subsection (2) of this section where continued compliance would adversely affect the financial condition of the company. Where such a suspension is granted, the carrier may not offer coverage in the individual market for a period of at least one hundred eighty days after the suspension is granted.

(5) For the purposes of this section, the term "health benefit plan", as defined in section 10-16-102 (21), does not include nonrenewable individual health benefit plans with a duration of six months or less.

**Source:** L. 97: Entire section added, p. 637, § 5, effective May 1. L. 2001: (1) and (2) amended, p. 1049, § 32, effective June 5. L. 2009: (2) amended, (HB 09-1349), ch. 377, p. 2052, § 2, effective June 1.

**Cross references:** For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 154, Session Laws of Colorado 1997.

**10-16-106. Group replacement - extension of benefits.** (1) This section shall indicate which carrier is liable where one carrier's group contract replaces a plan of similar benefits of another carrier within thirty-one days after the termination, cancellation, or expiration of the contract that is being replaced.

(2) The prior carrier remains liable only to the extent of its accrued liabilities, extensions of benefits as specified in the policy contract, and benefits for covered persons until release from an in-patient facility as required by section 10-16-705 (4). The position of the prior carrier shall be the same whether the group policyholder or other entity secures replacement coverage from a new carrier, self-insures, or foregoes coverage.

(3) Liability of a succeeding carrier is as follows:

(a) Each person who is eligible for coverage in accordance with the succeeding carrier's plan of benefits, with respect to classes eligible and actively at work and nonconfinement rules, if allowable, shall be covered by the succeeding carrier's plan of benefits except with respect to accrued liabilities and extensions of benefits provided for in subsection (2) of this section.

(b) Each person who is not eligible under the succeeding carrier's plan of benefits in accordance with paragraph (a) of this subsection (3) shall be covered by the succeeding carrier in accordance with the following guidelines if such individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance. Such guidelines are as follows:

(I) The minimum level of benefits to be provided by the succeeding carrier shall be the applicable level of benefits of the prior carrier's plan reduced by any benefits payable by the prior plan.

(II) Coverage shall be provided by the succeeding carrier until at least the earliest of the following dates:

(A) The date the individual becomes eligible under the succeeding carrier's plan as described in paragraph (a) of this subsection (3);

(B) The date the individual's coverage would terminate in accordance with the succeeding carrier's plan provisions applicable to individual termination of coverage, where employment is terminated or where the individual ceases to be an eligible dependent.

(C) (Deleted by amendment, L. 99, p. 196, § 2, effective January 1, 2000.)

(III) Nothing in this paragraph (b) shall be construed to limit the duration of continuation coverage provided for in section 10-16-108.

(c) (Deleted by amendment, L. 99, p. 196, § 2, effective January 1, 2000.)

(d) Each person previously covered by a policy which included deductibles or waiting periods shall be given credit for the satisfaction or partial satisfaction of the same or similar provisions in the succeeding policy where it provides similar benefits. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provisions of the prior carrier's plan during the ninety days preceding the effective date of the succeeding carrier's plan but only to the extent these expenses are recognized under the terms of the succeeding carrier's plan and are subject to a similar deductible provision.

(e) Where a determination of the extent of the prior carrier's benefits is required, the prior carrier shall furnish a statement of such benefits or other pertinent information sufficient to permit verification of the benefit determination or sufficient to allow the succeeding carrier to make the determination. For the purposes of this paragraph (e), benefits of the prior plan will be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage had not been replaced by the succeeding carrier.

**Source:** L. 92: Entire article R&RE, p. 1637, § 1, effective July 1. L. 99: (1), (2), (3)(a), (3)(b), and (3)(c) amended, p. 196, § 2, effective January 1, 2000.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**10-16-106.3. Uniform claims - billing codes - electronic claim forms.** (1) On or before July 1, 2002, all carriers shall accept the claim form adopted by the American dental association for use by all dental providers and carriers in the state, and the centers for medicare and medicaid services' claim forms CMS-1500 and CMS-1450, otherwise known as form UB-04, as amended, as the uniform health care claim forms for use by all other health care providers and carriers in the state. All carriers shall accept such claim forms from health care providers in electronic form. A carrier shall not prohibit submission of health care claims in hard copy form, nor shall a carrier be prohibited from requiring that a claim be submitted in hard copy form. A carrier shall not require submission of a claim on a form other than those set forth in this section, except as provided in subsection (3) of this section.

(2) On or before July 1, 2002, the commissioner shall adopt a uniform list of required elements to be used on the uniform claim forms accepted by carriers pursuant to this section. Such elements shall be used by health care providers in order for a claim to be considered a clean claim.

(3) Concurrent with the effective date for implementation of the federal "Health Insurance Portability and Accountability Act of 1996", as amended, and the federal regulations implemented pursuant to such act, as amended, for claims filed electronically, carriers shall require the submission of electronic claims with the elements in the format required by such act and such regulations and shall not require the submission of forms and elements pursuant to subsections (1) and (2) of this section.

**Source:** L. 2002: Entire section added, p. 312, § 1, effective April 19. L. 2007: (1) amended, p. 921, § 1, effective May 17.



**10-16-106.5. Prompt payment of claims - legislative declaration.** (1) The general assembly finds, determines, and declares that:

(a) Patients and health care providers often do not receive the reimbursements to which they are entitled from health insurance entities in a timely manner, even in the case of claims that are submitted on standard forms and do not require additional information for processing; and

(b) Unnecessary delays in the payment of routine and uncontested claims for reimbursement represent an unwarranted drain on health care providers' resources, which could be better spent attending to the needs of patients, as well as wasting the time and money of the patients themselves. Therefore, it is in the interest of the citizens of Colorado that reasonable standards be imposed for the timely payment of claims.

(2) As used in this section, "clean claim" means a claim for payment of health care expenses that is submitted to a carrier on the uniform claim form adopted pursuant to section 10-16-106.3 with all required fields completed with correct and complete information, including all required documents. A claim requiring additional information shall not be considered a clean claim and shall be paid, denied, or settled as set forth in paragraph (b) of subsection (4) of this section. "Clean claim" does not include a claim for payment of expenses incurred during a period of time for which premiums are delinquent, except to the extent otherwise required by law.

(2.5) This section shall apply to claims made as a result of injuries sustained in a motor vehicle accident regardless of whether fault in such accident has been determined.

(2.7) (a) A policyholder, insured, or provider may submit a claim:

(I) By United States mail, first class, or by overnight delivery service;

(II) Electronically;

(III) By facsimile (fax); or

(IV) By hand delivery.

(b) (I) A carrier shall make a mechanism available to providers that shall enable a provider to confirm the receipt of a claim that is filed with the carrier in a manner other than electronically. Within ten business days after the submission of the claim as determined by the provider, the carrier shall list such claim on the notification mechanism as received. The claim shall be deemed received on the date it is listed on the notification mechanism by the carrier. If a claim is not listed on the notification mechanism, the provider may contact the carrier for the purposes of resubmission of the claim. The carrier shall have a separate facsimile process to receive the resubmission of the paper claims. The resubmitted claim shall be deemed received on the date of the facsimile transmission acknowledgment. If such mechanism is accessible only by electronic means, upon request of the provider, the information must be made available in hard-copy form within three business days.

(II) If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the carrier or the carrier's clearinghouse. The carrier or carrier's clearinghouse shall provide a confirmation within one business day after submission by a provider.

(3) Every carrier shall provide a copy of its filing requirements to:

(a) Every enrollee or insured upon enrollment in the carrier's plan or upon issuance of the policy when applicable;

(b) Every enrollee or insured, upon request, within fifteen calendar days;

(c) Every participating provider upon acceptance of the provider into the carrier's network; and

(d) Every enrollee, insured, and participating provider within fifteen calendar days after any change in the standard form or the accompanying instructions or requirements when applicable.

(4) (a) Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the carrier if submitted electronically and within forty-five calendar days after receipt by the carrier if submitted by any other means.

(b) If the resolution of a claim requires additional information, the carrier shall, within thirty calendar days after receipt of the claim, give the provider, policyholder, insured, or patient, as appropriate, a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related

to the claim. The person receiving a request for such additional information shall submit all additional information requested by the carrier within thirty calendar days after receipt of such request. Notwithstanding any provision of an indemnity policy to the contrary, the carrier may deny a claim if a provider receives a request for additional information and fails to timely submit additional information requested under this paragraph (b), subject to resubmittal of the claim or the appeals process. If such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the carrier within the applicable time period set forth in paragraph (c) of this subsection (4).

(c) Absent fraud, all claims except those described in paragraph (a) of this subsection (4) shall be paid, denied, or settled within ninety calendar days after receipt by the carrier.

(d) (I) Except as otherwise provided in paragraph (b) of this subsection (4), if the carrier intends to prospectively conduct a charge audit, such carrier shall, not later than the forty-fifth day after the date the carrier receives the claim, pay the charges submitted by any participating institutional provider at a rate of at least eighty-five percent of the contracted rate on the claim, less deductibles, coinsurance, and copayments, and shall pay a nonparticipating institutional provider at least sixty percent of the amount due on the claim, less deductibles, coinsurance, and copayments. The carrier shall complete the charge audit, and make any additional payment not later than the ninetieth day after receipt of a claim.

(II) The institutional provider shall allow reasonable access to the records necessary to conduct the audit within the time period required by this paragraph (d).

(III) For the purposes of this paragraph (d), "charge audit" means an audit to determine whether data in an enrollee's medical record documents the health care services listed on a claim for payment submitted to a carrier. "Charge audit" does not mean a review of the medical necessity of the services provided.

(5) (a) A carrier that fails to pay, deny, or settle a clean claim in accordance with paragraph (a) of subsection (4) of this section or take other required action within the time periods set forth in paragraph (b) of subsection (4) of this section shall be liable for the covered benefit and, in addition, shall pay to the insured or health care provider, with proper assignment, interest at the rate of ten percent annually on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to subsection (4) of this section.

(b) A carrier that fails to pay, deny, or settle a claim in accordance with subsection (4) of this section within ninety days after receiving the claim shall pay to the insured or health care provider, with proper assignment, a penalty in an amount equal to twenty percent of the total amount ultimately allowed on the claim. Such penalty shall be imposed on the ninety-first day after receipt of the claim by the carrier. If a carrier denies a claim in accordance with subsection (4) of this section within ninety days after receiving the claim and the denial is determined to be unreasonable pursuant to a civil action in accordance with section 10-3-1116, the carrier shall pay the penalty in this paragraph (b) to the insured or to the assignee.

(c) To the extent that penalties are not paid concurrently with the claim, the penalties in this section may be paid on a quarterly basis or when the aggregate penalties for a provider exceeds ten dollars.

(6) This section shall not prohibit a carrier from retroactively adjusting payment of a claim that is not subject to the provisions of section 10-16-704, if:

(a) The policyholder notifies the carrier of a change in eligibility of an individual; and

(b) The adjustment is made within thirty days after the carrier's receipt of such notification.

(7) If a carrier delegates its claims processing functions to a third party, the delegation agreement shall provide that the claims processing entity shall comply with the requirements of this section. Any delegation by the carrier shall not be construed to limit the carrier's responsibility to comply with this section or any other applicable section of this article.

(8) This section shall not apply to claims filed pursuant to the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.



(9) The commissioner may investigate claims against a health coverage plan that is authorized to conduct business in this state when such claims are filed by a provider related to the improper handling or denial of benefits pursuant to this section.

**Source:** L. 99: Entire section added, p. 1140, § 1, effective January 1, 2000. L. 2002: (2), (4)(b), and (5)(b) amended and (2.7), (4)(d), (5)(c), (7), and (8) added, pp. 313, 314, §§ 2, 3, effective April 19; (6) amended, p. 887, § 4, effective January 1, 2003. L. 2003: (9) added, p. 2494, § 1, effective June 5; (2.5) amended, p. 1572, § 7, effective July 1. L. 2006: (2.5) amended, p. 977, § 1, effective January 1, 2007. L. 2008: (5)(b) amended, p. 2174, § 7, effective August 5.

**10-16-106.7. Assignment of health insurance benefits.** (1) (a) Any carrier that provides health coverage to a covered person shall allow, but not require, such covered person under the policy to assign, in writing, payments due under the policy to a licensed hospital, other licensed health care provider, an occupational therapist as defined in section 12-40.5-103, C.R.S., or a massage therapist as defined in section 12-35.5-103 (8), C.R.S., also referred to in this section as the “provider”, for services provided to the covered person that are covered under the policy.

(b) The covered person may, with or without the agreement of the provider, revoke the assignment. Such revocation shall be in writing and shall be sent to the carrier. The carrier shall send a copy of the revocation to the provider who is the subject of the revocation. The revocation shall be effective when it has been received by both the carrier and the provider and shall only affect those charges incurred after such receipt by both.

(2) (a) When a provider receives an assignment from a covered person, it is the responsibility of the provider to bill the carrier and notify the carrier that the provider holds an assignment on file. The carrier shall honor the assignment the same as if a copy of the assignment had been received by the carrier. Only upon request of the carrier shall the provider be required to give the carrier a copy of the assignment.

(b) The carrier shall honor the assignment and make payment of covered benefits directly to the provider. If the carrier fails to honor the assignment by making payment to the covered person and if the covered person, upon receipt of such payment, fails to pay an amount equivalent to such payment to the provider within forty-five days, the carrier shall be liable for the payment directly to the provider. It shall be the responsibility of the provider to notify the carrier if payment has not been received. In such case, the carrier shall make payment of covered benefits as specified in section 10-16-106.5.

(c) If the provider collects payment from the enrollee and subsequently receives payment from the carrier, the provider shall reimburse the enrollee, less any applicable copayments, deductibles, or coinsurance amounts, within forty-five days.

(3) Nothing in this section shall be construed to limit a carrier’s ability to determine the scope of its benefits, services, or any other terms of its policies, or from negotiating contracts with licensed hospitals or other licensed health care providers on reimbursement rates or any other lawful provisions.

**Source:** L. 2005: Entire section added, p. 489, § 1, effective August 8. L. 2008: (1)(a) amended, p. 830, § 7, effective July 1. L. 2009: (1)(a) amended, (SB 09-292), ch. 369, p. 1945, § 18, effective August 5. L. 2010: (1)(a) amended, (HB 10-1220), ch. 197, p. 856, § 23, effective July 1.

**10-16-107. Rate regulation - rules - approval of policy forms - benefit certificates - evidences of coverage - benefits ratio - disclosures on treatment of intractable pain.**

(1) Rates for any sickness, accident, or health insurance policy, contract, certificate, or other evidence of coverage issued or delivered to any policyholder, enrollee, subscriber, or member in Colorado, by an insurer subject to the provisions of part 2 of this article or an entity subject to the provisions of part 3 or 4 of this article shall not be excessive, inadequate, or unfairly discriminatory. To assure compliance with the requirements of this section that rates are not excessive in relation to benefits, the commissioner shall promul-

gate rules to require rate filings and, as part thereof, may require the submission of adequate documentation and supporting information including actuarial opinions or certifications and set expected benefits ratios. Expected rate increases shall be submitted to the commissioner at least sixty days prior to the proposed implementation of the rates. If the commissioner does not approve or disapprove the rate filings within a sixty-day period, the carrier may implement and reasonably rely upon the rates on the condition that the commissioner may require correction of any deficiencies in the rate filing upon later review if the rate charged is excessive, inadequate, or unfairly discriminatory. A prospective rate adjustment shall be the sole remedy for rate deficiencies pursuant to this subsection (1). If the commissioner finds deficiencies in the rate filing after a sixty-day period, the commissioner shall provide notice to the carrier and the carrier shall correct the rate on a prospective basis. Expected rate filing increases filed with the commissioner on or after June 5, 2008, may be reviewed by the commissioner and shall be disapproved and resubmitted for approval if any of the provisions of subsection (1.6) of this section apply. Rate filings that do not involve a requested rate increase, or a requested rate increase of less than five percent for dental insurance, shall not require preapproval and may be implemented upon filing with the commissioner. The filing requirements of this subsection (1) shall not apply to nondeveloped rates, including, but not limited to, rates for medicaid, medicare, and the children's basic health plan, as defined by the commissioner. Failure to supply the information required by this section will render the filing incomplete. The commissioner shall make a determination of completeness no later than thirty days following submission of the filing for review. All filings not returned on or before the thirtieth day after receipt will be considered complete. Filings may be reviewed for substantive content, and if reviewed, any deficiency shall be identified and communicated to the filing carrier on or before the forty-fifth day after receipt. Correction of any deficiency, including deficiencies identified after the forty-fifth day, shall be on a prospective basis, and no penalty shall be applied for a violation identified that was not willful. Rate filings for insurance regulated under parts 1 to 4 of this article shall be filed electronically in a format made available by the division, unless exempted by rule for an emergency situation as determined by the commissioner. A rate filing summary for insurance regulated under parts 1 to 4 of this article shall be posted on the division's internet site in order to provide notice to the public. Nothing in this section shall be construed to limit the right of the public to inspect a rate filing and any supporting information pursuant to part 2 of article 72 of title 24, C.R.S., nor to impair the commissioner's ability to review rates and determine that the rates are not excessive, inadequate, or unfairly discriminatory.

(1.5) (a) Rates for an individual health coverage plan issued or delivered to any policyholder, enrollee, subscriber, or member in Colorado by an insurer subject to part 2 of this article or an entity subject to part 3 or 4 of this article shall not be excessive, inadequate, or unfairly discriminatory to assure compliance with the requirements of this section that rates are not excessive in relation to benefits. Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. In determining if rates are excessive, the commissioner may consider the expected filed rates in relation to the actual rates charged. Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or the use of such rates, if continued, will tend to create a monopoly in the market. Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses.

(b) Notwithstanding any other provision of this article, an insurer subject to part 2 of this article or an entity subject to part 3 or 4 of this article shall not vary the premium rate for an individual health coverage plan due to the gender of the individual policyholder, enrollee, subscriber, or member. Any premium rate based on the gender of the individual policyholder, enrollee, subscriber, or member shall be considered unfairly discriminatory and shall not be allowed.

(1.6) (a) The commissioner shall disapprove the requested rate increase if any of the following apply:

(I) The benefits provided are not reasonable in relation to the premiums charged;



(II) The requested rate increase contains a provision or provisions that are excessive, inadequate, unfairly discriminatory, or otherwise do not comply with the provisions of this title;

(III) The requested rate increase is excessive or inadequate. In determining if the rate is excessive or inadequate, the commissioner may consider profits, dividends, annual rate reports, annual financial statements, subrogation funds credited, investment income or losses, unearned premium reserve and reserve for losses, surpluses, executive salaries, expected benefits ratios, any factors in section 10-16-111, and any other appropriate actuarial factors as determined by current actuarial standards of practice.

(IV) The actuarial reasons and data based upon Colorado claims experience and data, when available, do not justify the necessity for the requested rate increase; or

(V) The rate filing is incomplete.

(b) In determining whether to approve or disapprove a rate filing, the commissioner may consider, but shall not be limited to consideration of, the expected benefits ratio for a health benefit plan or any other cost category determined appropriate by the commissioner. The achievement of a benefits ratio of eighty-five percent or higher for large group insurance, eighty percent for small group insurance, and sixty-five percent for individual insurance by a carrier may expedite the review of the approval process for a carrier who meets the benefits ratio pursuant to this paragraph (b).

(1.7) (Deleted by amendment, L. 2008, p. 2251, § 6, effective July 1, 2008.)

(2) No policy of sickness and accident insurance or subscription certificate or membership certificate or other evidence of health care coverage shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application that becomes a part of any such policy, contract, or evidence of coverage be used, until the insurer has filed a certification with the commissioner that such policy, endorsement, rider, or application conforms, to the best of the insurer's good faith knowledge and belief, to Colorado law pursuant to section 10-16-107.2 and copies of the rates and the classification of risks or subscribers pertaining thereto are filed with the commissioner.

(3) (a) (Deleted by amendment, L. 92, p. 1744, § 4, effective January 1, 1993.)

(b) An evidence of coverage shall contain:

(I) No provisions or statements which are unjust, unfair, inequitable, misleading, or deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in section 10-16-413 (1); and

(II) A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate, of:

(A) The health care services and the insurance or other benefits, if any, to which the enrollee is entitled under the health care plan, including the ability to obtain a second opinion for proposed treatment by the health care provider, if the health benefit plan provides such coverage;

(B) Any limitations on the services, kind of services, benefits, or kind of benefits, to be provided, including any deductible or copayment feature;

(C) Where and in what manner information is available as to how services may be obtained;

(D) The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates;

(E) A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

(c) Any subsequent change may be evidenced in a separate document issued to the enrollee.

(d) A copy of the form of the evidence of coverage to be used in this state, and any amendment thereto, shall be subject to the filing and approval requirements of section 10-16-107.2 unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or nonprofit hospital, medical-surgical, and health service corporations in which event the filing and approval provisions of subsection (2) of this

section shall apply. To the extent, however, that such provisions do not apply, the requirements in paragraph (b) of this subsection (3) shall be applicable.

(e) (Deleted by amendment, L. 2008, p. 2251, § 6, effective July 1, 2008.)

(f) (Deleted by amendment, L. 92, p. 1744, § 4, effective January 1, 1993.)

(g) The commissioner may require the submission of whatever relevant information the commissioner deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(4) (a) For prepaid dental care plans no enrollee coverage or amendment, advertising matter, or sales material shall be issued or delivered to any person in this state until a copy of the form of the enrollee coverage or amendment, advertising matter, or sales material has been filed with the commissioner.

(b) The enrollee coverage shall contain a clear and complete statement of a contract, or a reasonably complete summary if a certificate of contract, of:

(I) The prepaid dental care services to which the enrollee is entitled under the prepaid dental care plan;

(II) Any limitations of the services, kind of services, or benefits to be provided, including any deductible or copayment feature;

(III) Where and in what manner information is available as to how services may be obtained;

(IV) The enrollee's obligation respecting charges for the prepaid dental care plan.

(c) The enrollee coverage, advertising matter, and sales material shall contain no provisions or statements which are unjust, unfair, inequitable, misleading, or deceptive or which encourage misrepresentation or which are untrue or misleading.

(d) The commissioner shall approve any form of enrollee coverage if the requirements of paragraphs (b) and (c) of this subsection (4) are met and the prepaid dental care plan is able in the judgment of the commissioner to meet its financial obligations under the enrollee coverage. It is unlawful to issue such form until approved. If the commissioner does not disapprove any such form within thirty days after the filing, it shall be deemed approved. If the commissioner disapproves a form of enrollee coverage, advertising matter, or sales material, the commissioner shall notify the prepaid dental care plan organization, specifying the reasons for disapproval. The commissioner shall grant a hearing on such disapproval within fifteen days after a request in writing is received from the prepaid dental care plan organization.

(5) Effective January 31, 1997, a managed care plan that provides coverage for reproductive health or gynecological care shall not be issued or renewed unless such plan either:

(a) Provides a woman covered by the plan direct access to an obstetrician, gynecologist, or an advanced practice nurse who is a certified nurse midwife pursuant to section 12-38-111.5, C.R.S., participating and available under the plan for her reproductive health care or gynecological care; or

(b) (I) Subject to rules promulgated by the commissioner, has procedures in place that ensure that, if a woman covered by the plan requests a timely referral to an obstetrician, gynecologist, or an advanced practice nurse who is a certified nurse midwife pursuant to section 12-38-111.5, C.R.S., participating and available under the plan for her reproductive health and gynecological care, the request for referral shall not be unreasonably withheld. Such rules shall include, but need not be limited to, the following issues:

(A) What constitutes a timely referral;

(B) Circumstances, practices, policies, contract provisions, or actions that constitute an undue or unreasonable interference with the ability of a woman to secure a referral or reauthorization for continuing care;

(C) The process for issuing a denial of a request, including the means by which a woman may obtain such a denial and the reasons therefor in writing;

(D) Actions that constitute improper penalties imposed upon primary providers as a result of referrals made pursuant to this subsection (5); and

(E) Such other issues the commissioner deems necessary.

(II) In developing rules pursuant to this subsection (5), the commissioner shall consult with providers, including, but not limited to, family care physicians, representatives of



health plans, and other appropriate persons and may conduct such surveys and analyses as may be necessary to develop the regulation.

(5.5) (a) No health coverage plan or managed care plan that provides coverage for eye care services shall be issued or renewed after January 1, 2001, by any entity subject to part 2, 3, or 4 of this article unless such health coverage plan or managed care plan:

(I) Provides a covered person direct access to any eye care provider participating and available under the plan or through its eye care services intermediary for eye care services;

(II) Ensures that all eye care providers on a health coverage plan or managed care plan are annually included on any publicly accessible list of participating providers for the health coverage plan or managed care plan; and

(III) Allows each eye care provider on a health coverage plan or managed care plan panel to furnish covered eye care services to covered persons without discrimination between classes of eye care providers and to provide such services as permitted by their license.

(b) A health coverage plan or managed care plan shall not:

(I) Impose a deductible or coinsurance for eye care services that is greater than the deductible or coinsurance imposed for other medical services under the health coverage plan or managed care plan;

(II) Require an eye care provider to hold hospital privileges as a condition of participation as a provider under the health coverage plan or managed care plan, unless an eye care provider is licensed pursuant to article 36 of title 12, C.R.S.; or

(III) Impose penalties upon primary care providers as a result of the direct access provisions of this subsection (5.5).

(c) Nothing in this subsection (5.5) shall be construed as:

(I) Creating coverage for any health care service that is not otherwise covered under the terms of the health coverage plan or managed care plan;

(II) Requiring a health coverage plan or managed care plan to include as a participating provider every willing provider or health professional who meets the terms and conditions of the health coverage plan or managed care plan;

(III) Preventing a covered person from seeking eye care services from the covered person's primary care provider in accordance with the terms of the covered person's health coverage plan or managed care plan;

(IV) Increasing or decreasing the scope of the practice of optometry as defined in section 12-40-102, C.R.S.;

(V) Requiring eye care services to be provided in a hospital or similar medical facility; or

(VI) Prohibiting a health coverage plan or managed care plan from requiring a covered person to receive a referral or prior authorization from a primary care provider for any subsequent surgical procedures.

(d) As used in this subsection (5.5), unless the context otherwise requires:

(I) "Eye care provider" means a participating provider who is an optometrist licensed to practice optometry pursuant to article 40 of title 12, C.R.S., or an ophthalmologist licensed to practice medicine pursuant to article 36 of title 12, C.R.S.

(II) "Eye care services" means those health care services related to the examination, diagnosis, treatment, and management of conditions and diseases of the eye and related structures that a managed care plan is obligated to pay, reimburse, arrange, or provide for covered persons or organizations as specified by a health coverage plan or managed care plan, excluding those health care services rendered in conjunction with a routine vision examination or the filling of prescriptions for corrective eyewear.

(6) (a) A carrier offering a group health benefit plan may not require any individual, as a condition of enrollment or continued enrollment under the plan, to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(b) The prohibition in paragraph (a) of this subsection (6) shall not be construed to:

(I) Restrict the amount that an employer may be charged for coverage under a group health benefit plan; or

(II) Prevent a carrier from establishing premium discounts or rebates or modifying otherwise applicable copayments, coinsurance, or deductibles in return for:

(A) Adherence to programs of health promotion and disease prevention if otherwise allowed by state or federal law;

(B) Participation in a wellness and prevention program pursuant to section 10-16-136; or

(C) Satisfaction of a standard related to a health risk factor pursuant to a wellness and prevention program authorized in section 10-16-136.

(7) (a) A service or indemnity contract issued or renewed on or after January 1, 1998, by any entity subject to part 2, 3, or 4 of this article shall disclose in the contract and in information on coverage presented to consumers whether the health coverage plan or managed care plan provides coverage for treatment of intractable pain. If the contract is silent on coverage of intractable pain, then the contract shall be presumed to offer coverage for the treatment of intractable pain. If the contract is silent or if the plan specifically includes coverage for the treatment of intractable pain, the plan shall provide access to such treatment for any individual covered by the plan either:

(I) By a primary care physician with demonstrated interest and documented experience in pain management whose practice includes up-to-date pain treatment;

(II) By providing direct access to a pain management specialist located within this state and participating in and available under the plan; or

(III) By having procedures in place that ensure that, if the individual requests a timely referral for intractable pain management to a pain management specialist participating in and available under the plan, the request for referral shall not be unreasonably denied by the plan. The commissioner shall promulgate rules pursuant to this subparagraph (III) that include, but need not be limited to, the following issues:

(A) What constitutes a timely referral;

(B) Circumstances, practices, policies, contract provisions, or actions that constitute an undue or unreasonable interference with the ability of an individual to secure a referral or reauthorization for continuing care;

(C) The process for issuing a denial of a request, including the means by which an individual may receive notice of a denial and the reasons therefor in writing;

(D) Actions that constitute improper penalties imposed upon primary care physicians as a result of referrals made pursuant to this subsection (7); and

(E) Such other issues as the commissioner deems necessary.

(b) For purposes of this subsection (7), “intractable pain” means a pain state in which the cause of the pain cannot be removed and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(8) On and after January 1, 2005, a carrier shall not refuse to issue or renew a health benefit plan to an individual based solely on the individual’s prior donation of a kidney.

**Source:** L. 92: Entire article R&RE, p. 1639, § 1, effective July 1; (1) amended and (1.5) and (1.7) added, p. 1774, § 2, effective July 1; (2), (3)(a), and (3)(f) amended, p. 1744, § 4, effective January 1, 1993. L. 94: (3)(d) amended, p. 1629, § 26, effective May 31. L. 96: (5) added, p. 730, § 2, effective July 1. L. 97: (2) and (3)(e) amended, p. 530, § 2, effective April 24; (7) added, p. 416, § 1, effective April 24; (6) added, p. 639, § 6, effective May 1. L. 98: (5)(a) and IP(5)(b)(I) amended, p. 124, § 1, effective January 1, 1999. L. 99: (3)(b)(II)(A) amended, p. 320, § 5, effective July 1; (3)(e)(I) amended, p. 84, § 6, effective July 1. L. 2000: (5.5) added, p. 195, § 1, effective March 27. L. 2001: (1.5)(b) amended, p. 1214, § 42, effective January 1, 2002. L. 2004: (8) added, p. 963, § 1, effective May 21. L. 2005: (1.5)(f) amended, p. 762, § 15, effective June 1. L. 2007: (1), (1.5)(c), and (3)(e)(I) amended, p. 2004, § 2, effective January 1, 2008. L. 2008: (1) amended, p. 2250, § 5, effective June 5; (1.5), (1.7), and (3)(e) amended and (1.6) added,



p. 2251, § 6, effective July 1. **L. 2009:** (6) amended, (HB 09-1012), ch. 188, p. 823, § 2, effective July 1. **L. 2010:** (6) amended, (HB 10-1160), ch. 283, p. 1327, § 4, effective July 1; (1.5) amended, (HB 10-1008), ch. 40, p. 162, § 1, effective January 1, 2011.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the legislative declaration contained in the 1992 act amending subsection (1) and enacting subsections (1.5) and (1.7), see section 1 of chapter 218, Session Laws of Colorado 1992. For the legislative declaration contained in the 1997 act enacting subsection (6), see section 1 of chapter 154, Session Laws of Colorado 1997. For the legislative declaration contained in the 1999 act amending subsection (3)(b)(II)(A), see section 1 of chapter 111, Session Laws of Colorado 1999. In 2008, subsections (1), (1.5), (1.7), and (3)(e) were amended and subsection (1.6) was enacted by the "Fair Accountable Insurance Rates Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008.

**10-16-107.1. False or misleading information - penalties.** (1) A person or organization shall not knowingly withhold information that will affect the rates or premiums chargeable under this part 1 or knowingly give false or misleading information to the commissioner or any statistical agent, advisory organization, or carrier. A person or organization who violates this section shall be subject to the penalties in subsection (2) of this section.

(2) Upon a finding that any person or organization has knowingly violated subsection (1) of this section, the commissioner may impose a penalty of not more than ten thousand dollars for each violation but, if the violation is found to be willful, a penalty of not more than twenty-five thousand dollars for each violation. The penalties may be in addition to any other penalty provided by law.

**Source:** **L. 2008:** Entire section added, p. 2255, § 7, effective July 1.

**Cross references:** In 2008, this section was enacted by the "Fair Accountable Insurance Rates Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008.

**10-16-107.2. Filing of health policies - rules.** (1) All sickness and accident insurers, health maintenance organizations, and nonprofit hospital and health service corporations authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy form, endorsement, or rider for any sickness, accident, nonprofit hospital and health service corporation, health maintenance organization, or other health insurance policy, contract, certificate, or other evidence of coverage issued or delivered to any policyholder, certificate holder, enrollee, subscriber, or member in Colorado. Such listing shall be submitted by January 15, 1993, and not later than December 31 of each subsequent year and shall contain a certification by an officer of the organization that each policy form, endorsement, or rider in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) (a) All sickness and accident insurers, health maintenance organizations, nonprofit hospital and health service corporations, and other entities providing health care coverage authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, application, endorsement, or rider at least thirty-one days before using such policy form, application, endorsement, or rider for any health coverage. Such listing shall also contain a certification by an officer of the organization that each new policy form, application, endorsement, or rider proposed to be used complies, to the best of the insurer's good faith knowledge and belief, with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(b) (I) The commissioner shall develop a uniform employee application form for health benefit plans and shall require all small group sickness and accident insurers, health maintenance organizations, nonprofit hospital and health service corporations, and other

entities providing small group health care coverage authorized by the commissioner to conduct business in Colorado to exclusively use such uniform employee application form for the conduct of business in this state. On and after January 1, 2007, all small group sickness and accident insurers, health maintenance organizations, nonprofit hospital and health service corporations, and other entities that provide small group health care coverage shall use the uniform employee application form for small group sickness and accident health benefit plans.

(II) The division may permit carriers to use a modified electronic version of the uniform application form.

(c) (I) The commissioner shall implement an initial uniform application form for individual health benefit plans and, on and after January 1, 2012, shall require all individual sickness and accident insurers, health maintenance organizations, nonprofit hospital and service corporations, health insurance producers and producer organizations, and other entities providing individual health care coverage authorized by the commissioner to conduct business in this state, to exclusively use the uniform application form for the conduct of business in this state. The initial uniform application form shall include the name of the applicant, contact information for the applicant, other demographic information approved by the commissioner, and questions concerning medical conditions for which the carrier may refuse to issue coverage.

(II) The commissioner shall consider recommendations regarding the initial uniform application form and content of the application that are submitted to the division by members of the insurance industry on or before January 1, 2011.

(III) The commissioner shall promulgate rules to implement the initial uniform application form on or before September 1, 2011.

(IV) On and after January 1, 2012, all individual sickness and accident insurers, health maintenance organizations, nonprofit hospital and service corporations, health insurance producers and producer organizations, and other entities that issue individual health benefit plans shall use the initial uniform application form for an individual's coverage.

(V) Upon receipt of an initial uniform application form from a consumer, the carrier shall review the application form and decide to issue coverage, to ask for additional unduplicated information, or to deny coverage.

(VI) If a carrier decides to deny coverage based upon information received in the initial uniform application form, the denial of coverage shall serve as a denial for purposes of eligibility for coverage through CoverColorado pursuant to part 5 of article 8 of this title.

(3) The commissioner shall promulgate rules and regulations by September 30, 1993, and periodically thereafter as needed, setting forth the standards for policy forms, endorsements, and riders marketed in Colorado.

(4) The commissioner shall have the power to examine and investigate organizations authorized to conduct business in Colorado to determine whether policy forms, endorsements, and riders comply with the certification of the organization and statutory mandates.

**Source:** L. 92: Entire section added, p. 1745, § 5, effective June 2. L. 2005: (2) amended, p. 741, § 1, effective January 1, 2006. L. 2006: (2)(b)(I) amended, p. 1077, § 5, effective January 1, 2007. L. 2010: (2)(c) added, (HB 10-1242), ch. 222, p. 966, § 1, effective August 11.

**Editor's note:** Although the effective date for the repeal and reenactment of this article was July 1, 1992, this section was added, effective June 2, 1992.

**Cross references:** For the legislative declaration contained in the 2006 act amending subsection (2)(b)(I), see section 1 of chapter 236, Session Laws of Colorado 2006.

**10-16-107.3. Health insurance policies - plain language required - rules.** (1) (a) A carrier issuing or renewing a health benefit plan, limited benefit health insurance, dental plan, or long-term care plan subject to this article shall not issue or renew the plan unless the text of the plan does not exceed the tenth-grade level as measured by the Flesch-Kincaid



grade level formula or does not score less than fifty as measured by the Flesch reading ease formula.

(b) In conjunction with the report submitted to the commissioner pursuant to section 10-16-107.2, the carrier shall report the readability scores prior to the issuance or renewal of a policy or the use of the plan.

(2) The health benefit plan, limited benefit health insurance, dental plan, or long-term care plan shall contain an index or table of contents if the plan is more than three pages in length or if the text of the plan exceeds three thousand words. The index, table of contents, and text of the plan shall be printed in not less than ten-point type.

(3) For purposes of subsection (1) of this section, the following shall apply:

(a) (I) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall count as one word;

(II) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and

(III) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciations containing fewer syllables may be used.

(b) "Text" includes all printed matter except the following:

(I) The name and address of the carrier; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; and specification pages, schedules, or tables; and

(II) Any policy language that is drafted to conform to the requirements of any federal law or regulation; any policy language required by any collectively bargained agreement; any medical terminology; any words that are defined in the policy; and any policy language required by law or regulation if the carrier identifies the language or terminology excepted and certifies in writing that the language or terminology is entitled to be excepted.

(4) The commissioner shall promulgate rules regarding the electronic dissemination of newly issued or renewed policy forms or endorsements.

(5) For the purposes of subsection (1) of this section, for group health benefit plans, the evidence of coverage or certificate of coverage that is provided to the covered person shall be the only text for the purposes of the Flesch-Kincaid grade level formula and the Flesch reading ease formula.

**Source: L. 2010:** Entire section added, (HB 10-1166), ch. 143, p. 487, § 2, effective January 1, 2012.

**Editor's note:** Section 3 of chapter 143, Session Laws of Colorado 2010, provides that the act adding this section applies to automobile insurance policies, health benefit plans, limited benefit health insurance, dental plans, and long-term care plans issued or renewed and being marketed on or after January 1, 2012.

**10-16-108. Conversion and continuation privileges. (1) Group sickness and accident insurance - conversion privileges.** (a) If the group insurance policy provides hospital, surgical, or major medical insurance or any combination of these coverages on an expense-incurred basis, for other than specified diseases or accidental injuries only, the health benefit plan shall also contain a conversion privilege conforming to the requirements of paragraph (c) of this subsection (1).

(b) Every group sickness and accident insurance policy included within the provisions of section 10-16-214 (1) shall contain a provision which permits every covered employee whose employment is terminated, if the policy remains in force for active employees of the employer, to elect to continue the coverage for himself and his dependents. Such provision shall conform to the requirements, where applicable, of subparagraph (XVII) of paragraph (d) and paragraphs (e) and (f) of this subsection (1).

(c) (I) A group policy delivered or issued for delivery in this state which provides hospital, surgical, or major medical expense insurance or any combination of these coverages on an expense-incurred basis, but not including a policy which provides benefits

for specific diseases or for accidental injuries only, shall provide that an employee, dependent, or member whose insurance under the group policy has been terminated for any reason other than discontinuance of the group policy in its entirety or with respect to an insured class or failure of the employee or member to pay any required contribution and who has been continuously insured under the group policy (and under any group policy providing similar benefits which it replaces) for at least three months immediately prior to termination is entitled to have issued by the insurer a policy of sickness and accident insurance, referred to in this paragraph (c) as the "converted policy", subject to the following conditions:

(A) Written application for the converted policy shall be made and the first premium paid to the insurer no later than thirty-one days after such termination.

(B) The converted policy shall be issued without evidence of insurability.

(C) The initial premium for the converted policy shall be determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under the converted policy and to the type and amount of the insurance provided. Conditions pertaining to health shall not be an acceptable basis of classification for the purposes of this paragraph (c). The frequency of premium payments shall be the frequency customarily required by the insurer for the policy form and plan selected, but the insurer shall not require premium payments less frequently than quarterly without the consent of the insured.

(D) The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(E) The converted policy shall cover the employee or member and any dependents thereof who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(F) The insurer shall not be required to issue a converted policy covering any person if such person is covered by medicare. Furthermore, the insurer shall not be required to issue a converted policy covering any person if such person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy, a hospital or medical service subscriber contract, a medical practice or other prepayment plan, or any other plan or program if such person is eligible for similar benefits (whether or not covered therefor) under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis, or if similar benefits are provided for or available to such person pursuant to or in accordance with the requirements of any statute and the benefits provided or available under such sources for such person, together with the converted policy, would result in overinsurance according to the insurer's standards.

(II) In the event that coverage would be continued under the group policy on an employee following such employee's retirement prior to the time the employee is or could be covered by medicare, the employee may elect, in lieu of such continuation of group insurance, to have the same conversion rights as would apply had the insurance terminated at retirement by reason of termination of employment or membership.

(III) Subject to the conditions set forth in subparagraphs (I) and (II) of this paragraph (c), the conversion privilege shall also be available: To the surviving spouse, if any, at the death of the employee or member with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death or to each surviving child whose coverage under the group policy terminates by reason of such death or, if the group policy provides for continuation of dependents' coverage following the employee's or member's death, at the end of such continuation; to the spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the spouse and such children whose coverage under the group policy terminates at the same time; to a child solely with respect to such child upon termination of the child's coverage by reason of ceasing to be a qualified family member under the group policy if a conversion privilege is not otherwise provided with respect to such termination.

(IV) The insurer may elect to provide group insurance coverage in lieu of the issuance of a converted policy.



(d) (I) A converted policy issued upon the exercise of the conversion privilege of paragraph (c) of this subsection (1) shall offer a choice of a basic or standard health benefit plan.

(II) to (VII) Repealed.

(VIII) The converted policy may provide for the termination of coverage thereunder of any person when such person is covered by medicare, Title XVIII of the federal "Social Security Act" as added by the "Social Security Amendments of 1965" or as later amended or superseded.

(IX) The converted policy may provide that the insurer may request information from the converted policyholder, in advance of any premium due date of the converted policy, to determine whether any person covered thereunder:

(A) Is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy, any hospital or medical service subscriber contract, any medical practice or other prepayment plan, or any other plan or program; or

(B) Is eligible for similar benefits, whether or not covered therefor, under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(C) Has similar benefits provided for or available to such person, pursuant to or in accordance with the requirements of any statute.

(X) The converted policy may also provide that the insurer need not renew the converted policy or the coverage of any person insured thereunder either if the benefits provided under the sources referred to in subparagraph (IX) of this paragraph (d) for such person, together with the converted policy, would result in overinsurance according to the insurer's standards or if the converted policyholder refuses to provide the requested information.

(XI) and (XII) Repealed.

(XIII) With respect to any person who was covered by the group policy, the period specified in the time limit on certain defenses provisions of the converted policy shall commence with the date the person's insurance became effective under the group policy.

(XIV) If the insurer elects to provide group insurance coverage in lieu of a converted policy, the benefit levels required for a converted policy shall be applicable to such group insurance coverage.

(XV) (A) An employee or member who is entitled to make application for a converted policy pursuant to the provisions of paragraph (c) of this subsection (1) shall be given written notice of the existence of the conversion privilege at least fifteen days prior to the expiration of the thirty-one-day conversion period established by the group policy. If the employee or member is not given notice of his conversion rights, the employee or member shall have an additional period within which to exercise such conversion privilege. This additional period shall expire fifteen days after the employee or member has been given such notice, but in no event shall the additional period be continued for more than sixty days after the expiration of the thirty-one-day period established by the group policy.

(B) Written notice presented to the employee or member by the policyholder or mailed by the policyholder to the last-known address of the employee or member, as furnished to the policyholder, shall constitute the giving of notice for the purpose of this provision. If an employee or member is permitted an additional period for conversion, as provided in this subparagraph (XV), and if written application for the converted policy, accompanied by the initial premium, is made within the additional period, the effective date of the converted policy shall be the day following the employee's or member's termination of insurance under the group policy.

(XVI) Benefits due under a policy of insurance insuring against disability from sickness or accident shall not be reduced by an increase in federal social security benefits once payment of disability benefits has commenced.

(XVII) An employee shall be eligible to make the election on such employee's own behalf and for such employee's dependents provided for in paragraph (b) of this subsection (1) if:

(A) The employee's eligibility to receive insurance coverage has ended for any reason other than discontinuance of the group policy in its entirety or with respect to an insured class;

(B) Any premium or contribution required from or on behalf of the employee has been paid to the termination date; and

(C) The employee has been continuously insured under the group policy, or under any group policy providing similar benefits which it replaces, for at least six months immediately prior to termination.

(XVIII) The provisions of subparagraph (XVII) of this paragraph (d) shall not apply to a policy which provides benefits for specific diseases or for accidental injuries only.

(XIX) The employer shall not be required to offer continuation of coverage of any person if such person is covered by medicare, Title XVIII of the federal "Social Security Act", or medicaid, Title XIX of the federal "Social Security Act".

(e) (I) Upon the termination of employment of an eligible employee, the death of any such employee, or the change in marital status of any such employee, the employee or dependent has the right to continue the coverage for a period of eighteen months after loss of coverage or until such employee or dependent becomes eligible for other group coverage, whichever occurs first. However, should new coverage exclude a condition covered under the continued plan, coverage under the prior employer's plan may be continued for the excluded condition only for the eighteen months or until the new plan covers the condition, whichever occurs first.

(II) The employer shall notify the employee in writing of the employee's right to continue health care coverage upon termination from employment. A written communication signed by the employee or a notice postmarked within ten days of termination mailed by the employer to the last-known address of the employee shall meet the notice requirements of this subparagraph (II). The notification shall inform the employee of:

(A) The employee's right to elect to continue the existing coverage at the applicable rate;

(B) The amount such employee must pay monthly to the employer to retain the coverage, which payment shall include the employer's contribution for such employee in addition to the employee's own contribution;

(C) The manner in which and the office of the employer to which the payment to the employer must be made;

(D) The time by which the payments to the employer must be made to retain coverage; and

(E) The fact that loss of coverage will result if timely payment is not made to the employer.

(III) The employee shall notify the employer in writing of the employee's election to continue coverage, and shall make proper payment to the employer as soon as possible upon notification by the employer of termination; however, in no case shall such notification occur or such payment be made more than thirty days after the date of termination of employment unless the employer has failed to give timely notice in accordance with subparagraph (II) of this paragraph (e). Timely submission of payment and notice by the employee shall result in the continuation of such employee's health care coverage as if there had been no interruption of coverage. Failure to timely submit proper payment and notice by the employee shall relieve the employer of any responsibility to the employee for the continuation of health care coverage.

(IV) If the employer fails to notify an eligible employee of the right to elect to continue the coverage, the employee shall have the option to retain coverage if, within sixty days of the date the employment is terminated, the employee makes the proper payment to the employer to provide continuous coverage.

(V) After timely receipt of the monthly payment from an eligible employee, if the employer fails to make the payment to the insurer, with the result that the employee's coverage is terminated, the employer shall become liable for the employee's coverage, but to no greater extent than the amount of the premium.

(f) A group sickness and accident insurance policy that provides for continued coverage after an employee is terminated, as required by paragraph (b) of this subsection (1), shall also include a provision allowing a covered employee or surviving spouse or dependent, at the expiration of such continued coverage, to obtain from the insurer underwriting the group policy, at the employee's, spouse's, or dependent's option and expense, without further



evidence of insurability and without interruption of coverage, an individual policy of sickness and accident insurance which shall conform to the descriptions, limitations, and requirements of converted policies pursuant to subparagraph (I) of paragraph (c) of this subsection (1).

(g) The provisions of subparagraph (XVII) of paragraph (d) of this subsection (1) and paragraphs (e) and (f) of this subsection (1) shall apply to all group policies issued, renewed, or reinstated on and after July 1, 1986.

**(2) Group contracts of nonprofit hospital, medical-surgical, and health service corporations and group service contracts of health maintenance organizations.**

(a) Every group contract or group service contract providing hospital services, medical-surgical services, or other health services for subscribers or enrollees and their dependents issued by a nonprofit hospital, medical-surgical, and health service corporation or a health maintenance organization operating with a certificate of authority pursuant to part 3 or 4 of this article shall contain a provision which permits every covered employee or enrollee of an employed group whose employment is terminated, if the contract remains in force for active employees of the employer, to elect to continue the coverage for such employee and the employee's dependents. Such provision shall conform to the requirements, where applicable, of paragraphs (b), (c), and (d) of this subsection (2).

(b) (I) An employee shall be eligible to make the election for such employee and the employee's dependents provided for in paragraph (a) of this subsection (2) if:

(A) The employee's eligibility to receive insurance coverage has ended for any reason other than discontinuance of the group contract in its entirety or with respect to an insured class;

(B) Any premium or contribution required from or on behalf of the employee has been paid to the termination date; and

(C) The employee has been continuously covered under the group contract, or under any group contract providing similar benefits which it replaces, for at least six months immediately prior to termination.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to a contract which provides benefits for specific diseases or for accidental injuries only.

(III) The employer shall not be required to offer continuation of coverage of any person if such person is covered by medicare, Title XVIII of the federal "Social Security Act", or medicaid, Title XIX of the federal "Social Security Act".

(c) (I) Upon the termination of employment of an eligible employee, the death of any such employee, or the change in marital status of any such employee, the employee or dependent has the right to continue the coverage for a period of eighteen months after loss of coverage or until the employee or dependent becomes eligible for other group coverage, whichever occurs first. However, should new coverage exclude a condition covered under the continued plan, coverage under the prior employer's plan may be continued for the excluded condition only for the eighteen months or until the new plan covers the condition, whichever occurs first.

(II) The employer shall notify the employee of such employee's right to continue health care coverage upon termination from employment. Such notification shall be in writing. A written communication signed by the employee or a notice postmarked within ten days of termination mailed by the employer to the last-known address of the employee shall also meet the notice requirements of this subparagraph (II). The notification shall inform the employee of:

(A) The employee's right to elect to continue the existing coverage at the applicable rate;

(B) The amount the employee must pay monthly to the employer to retain the coverage, which payment shall include the employer's contribution for such employee in addition to the employee's own contribution;

(C) The manner in which and the office of the employer to which the payment to the employer must be made;

(D) The time by which the payments to the employer must be made to retain coverage; and

(E) The fact that loss of coverage will result if timely payment is not made to the employer.

(III) The employee shall notify the employer in writing of the employee's election to continue coverage, and shall make proper payment to the employer as soon as possible upon notification by the employer of termination; however, in no case shall such notification occur or such payment be made more than thirty days after the date of termination of employment unless the employer has failed to give timely notice in accordance with subparagraph (II) of this paragraph (c). Timely submission of payment and notice by the employee shall result in the continuation of such employee's health care coverage as if there had been no interruption of coverage. Failure to timely submit proper payment and notice by the employee shall relieve the employer of any responsibility to the employee for the continuation of health care coverage.

(IV) If the employer fails to notify an eligible employee of the right to elect to continue the coverage, the employee shall have the option to retain coverage if, within sixty days of the date such employment is terminated, such employee makes the proper payment to the employer to provide continuous coverage.

(V) After timely receipt of the monthly payment from an eligible employee, if the employer fails to make the payment to the insurer, with the result that the employee's coverage is terminated, the employer shall become liable for the employee's coverage, but to no greater extent than the amount of the premium.

(d) A group contract or group service contract that provides for continued coverage after an employee is terminated, as required by paragraph (a) of this subsection (2), shall also include a provision allowing a covered employee or surviving spouse or dependent, at the expiration of such continued coverage, to obtain from the insurer underwriting the group contract or group service contract, at the employee's, spouse's, or dependent's option and expense, without further evidence of insurability and without interruption of coverage, an individual service contract or contract providing hospital, medical-surgical, or other health services which shall conform to the same type of descriptions, limitations, and requirements as those specified for converted policies pursuant to subparagraph (I) of paragraph (c) of subsection (1) of this section.

(e) The provisions of paragraphs (b) to (e) of this subsection (2) shall apply to all group contracts issued, renewed, or reinstated on and after July 1, 1986.

**(3) Continuation of policies and group service contracts - reduction in hours of work.** Every group policy or group service contract delivered or issued for delivery in this state by an insurer subject to the provisions of part 2 of this article or by an entity subject to the provisions of part 3 or 4 of this article that covers full-time employees working forty or more hours per week shall contain a provision that the policyholder may elect to contract with the insurer or other entity to continue such policy or contract under the same conditions and for the same premium for such employees and their dependents even if the policyholder or employer reduces the working hours of such employees to less than thirty hours per week, if the following conditions are met:

(a) The covered employee is employed as a full-time employee of the policyholder or employer and is insured under the group policy or group service contract, or under any group policy or group service contract providing similar benefits which said group policy or group service contract replaces, immediately prior to such reduction in working hours;

(b) The policyholder has imposed such reduction in working hours due to economic conditions or the reduction of hours is due to the employee's injury, disability, or chronic health conditions; and

(c) The policyholder intends to restore the employee to a full forty-hour work schedule as soon as economic conditions improve or as soon as the employee is able to return to full-time work.

**(4) Special provisions for small group health benefit plans.** (a) Effective January 1, 1995, each small employer carrier shall, upon termination of a group policy by the carrier or employer for reasons other than replacement with another group policy or fraud and abuse in procuring and utilizing coverage, offer to any individual the choice of a basic or standard health benefit plan, except as provided in paragraph (b) of this subsection (4). Reasons for termination include, but are not limited to, the group no longer meeting



participation requirements, cancellation due to nonpayment of premiums, or the policyholder exercising the right to cancel.

(b) If the group's original plan had benefits which were significantly less generous in most respects than the standard plan as determined by the commissioner, the carrier is only required to offer the basic health benefit plan to such group or individual. If an individual is eligible for continuation coverage or conversion coverage pursuant to section 10-16-108 or is eligible for continuation coverage under federal law, then the provisions of paragraph (a) of this subsection (4) and this paragraph (b) shall not apply to such an individual.

(c) Each small employer carrier shall offer the choice of a basic or standard health benefit plan to any individual who loses nexus to existing small group coverage; except that:

(I) If an individual is eligible for continuation coverage or conversion coverage pursuant to section 10-16-108 or is eligible for continuation coverage under federal law, then the provisions of this paragraph (c) shall not apply to such an individual; and

(II) If an individual lost nexus to group coverage for fraud or abuse in procuring or utilizing coverage, then the provisions of this paragraph (c) shall not apply to such an individual.

**Source:** **L. 92:** Entire article R&RE, p. 1643, § 1, effective July 1; (1)(e)(I) and (2)(c)(I) amended, p. 1746, § 6, effective January 1, 1993. **L. 94:** (1)(a), IP(1)(c)(I), (1)(d)(I), (1)(e)(I), and (2)(c)(I) amended and (4) added, p. 1911, § 8, effective July 1; (1)(d)(II) to (1)(d)(VII), (1)(d)(XI), and (1)(d)(XII) repealed, p. 1920, § 14, effective July 1. **L. 99:** IP(1)(e)(II), (1)(e)(III), (1)(e)(IV), IP(2)(c)(II), (2)(c)(III), and (2)(c)(IV) amended, p. 198, §§ 3, 4, effective January 1, 2000. **L. 2008:** (3) amended, p. 1232, § 1, effective May 27.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

## ANNOTATION

**Law reviews:** For article, "The Terminated Employee's Right to Continue Group Health Insurance", see 17 Colo. Law. 53 (1988).

### **10-16-108.3. Continuation privileges - special election period - notice requirements - definitions - repeal. (Repealed)**

**Source:** **L. 2009:** Entire section added, (HB 09-1349), ch. 377, p. 2049, § 1, effective June 1.

**Editor's note:** Subsection (10) provided for the repeal of this section, effective January 1, 2010. (See L. 2009, p. 2049.)

**10-16-108.5. Fair marketing standards.** (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic health benefit plan and the standard health benefit plan, to eligible small employers in the state.

(2) (a) Except as provided in paragraph (b) of this subsection (2), no carrier or producer shall, directly or indirectly, engage in the following activities:

(I) Encouraging or directing individuals or small employers to refrain from filing an application for coverage with the individual or small employer carrier because of the health status, claims experience, industry, occupation, or geographic location of the individual or small employer;

(II) Encouraging or directing individuals or small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the individual or small employer.

(b) The provisions of paragraph (a) of this subsection (2) shall not apply with respect to information provided by a carrier or producer to an individual or a small employer

regarding the established geographic service area or a restricted network provision of a carrier.

(3) (a) Except as provided in paragraph (b) of this subsection (3), no small employer carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(b) Paragraph (a) of this subsection (3) shall not apply to a compensation arrangement with a producer on the basis of a percentage of premium if such percentage does not vary because of the health status, claims experience, industry, occupation, or geographic area of the individual or small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the small employer health reinsurance program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) No small employer carrier shall terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status, claims experience, occupation, or geographic area of the small employers placed by the producer with the small employer carrier.

(6) No carrier shall induce or otherwise encourage a small employer to exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Any denial by a carrier of an application for coverage from an individual or a small employer shall be in writing and shall state any reason for the denial.

(8) The commissioner may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to individuals and small employers in this state.

(9) A violation of this section by a carrier or a producer is an unfair or deceptive act or practice pursuant to the provisions of part 11 of article 3 of this title.

(10) If a small employer carrier enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative marketing or other service related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section as if it were a small employer carrier.

(11) (a) Effective January 1, 1998, all carriers offering or providing health benefit plan coverage or medicare supplemental coverage shall make available a Colorado health benefit plan description form for each policy, contract, and plan of health benefits that either covers a Colorado resident or is marketed to a Colorado resident or such resident's employer.

(b) The format for and elements of the Colorado health benefit plan description form shall be determined by rule of the commissioner after consultation with consumer, provider, and carrier representatives.

(c) A Colorado health benefit plan description form shall include information of general interest to purchasers of health plans and persons insured under health plans. Such form shall be designed to facilitate comparison of different health benefit plans. Informational materials specifying the plan's cancer screening coverages and their respective parameters shall be included with the form.

(d) A carrier shall provide a completed Colorado health benefit plan description form for each of its health benefit plans:

(I) Upon request, to any person covered by such plan or such person's employer; and

(II) As part of its marketing materials, to any person or employer who may be interested in purchasing or obtaining coverage under such a plan. This requirement shall include the provision of the form by the carrier to every employee who has the option of selecting such a plan during an employer's open enrollment period.

**Source:** L. 94: Entire section added, p. 1913, § 9, effective July 1. L. 97: (11) added, p. 1336, § 1, effective June 3. L. 2004: (11)(b) and (11)(c) amended, p. 935, § 2, effective May 21. L. 2007: (1) amended, p. 1754, § 4, effective January 1, 2009.



**Cross references:** For the legislative declaration contained in the 2004 act amending subsections (11)(b) and (11)(c), see section 1 of chapter 262, Session Laws of Colorado 2004.

**10-16-109. Rules and regulations.** Pursuant to the provisions of article 4 of title 24, C.R.S., the commissioner may promulgate such reasonable rules and regulations not inconsistent with the provisions of this article as are necessary or proper for carrying out the provisions of this article.

**Source: L. 92:** Entire article R&RE, p. 1655, § 1, effective July 1.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**10-16-110. Fees paid by health coverage entities.** (1) (a) There shall be paid to the division of insurance by every corporation subject to the provisions of this part 1 and part 3 of this article such fees as are prescribed pursuant to sections 10-3-207 and 24-31-104.5, C.R.S.

(b) Every nonprofit hospital and health service corporation representative subject to this part 1 and part 3 of this article shall pay to the commissioner the following fees:

(I) For each enrollment representative's initial license, ten dollars;

(II) For each enrollment representative's renewal license, six dollars.

(c) To defray the cost of administering this article, every corporation subject to the provisions of this part 1 and part 3 of this article shall pay annually to the commissioner on March 1 an amount equivalent to five cents per person exceeding ten thousand in number enrolled in the health service plans of such corporation.

(2) (a) Every health maintenance organization subject to this part 1 and part 4 of this article shall pay to the commissioner the fees as prescribed pursuant to sections 10-3-207 and 24-31-104.5, C.R.S.

(b) Every health maintenance organization representative subject to this part 1 and part 4 of this article shall pay to the commissioner the following fees:

(I) For each enrollment representative's initial license, ten dollars;

(II) For each enrollment representative's renewal license, six dollars.

(3) Coincident with the filing of the annual report prescribed by section 10-16-111, each prepaid dental care plan organization subject to this part 1 and part 5 of this article shall pay to the state treasurer through the commissioner fees for transacting a prepaid dental care plan. The fees shall be as prescribed pursuant to sections 10-3-207 and 24-31-104.5, C.R.S.

(4) Notwithstanding the amount specified for any fee in this section, the commissioner by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source: L. 92:** Entire article R&RE, p. 1655, § 1, effective July 1. **L. 98:** (4) added, p. 1328, § 33, effective June 1. **L. 2010:** (1)(a), (2)(a), and (3) amended, (HB 10-1385), ch. 204, p. 884, § 8, effective May 5. **L. 2012:** (1)(a), (2)(a), and (3) amended, (SB 12-110), ch. 158, p. 562, § 10, effective July 1.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**10-16-111. Annual statements and reports - repeal.** (1) **Nonprofit hospital, medical-surgical, and health service corporations.** (a) All corporations subject to the provisions of this part 1 and part 3 of this article doing business in this state on July 1, 1967,

or which may thereafter do business in this state, shall make and file annually with the commissioner, on or before the first day of March of each year, a statement under oath upon a form prescribed by the commissioner stating the amount of all membership dues or subscriber fees collected in this state or from residents thereof by the corporation making such statement during the year ending the last day of December next preceding; the amounts actually paid during such year for hospital, medical-surgical, and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, membership dues or fees paid in advance but not yet earned, and all other liabilities and obligations required of domestic insurers which are consistent with the responsibilities of such corporations. The annual statement made to the commissioner pursuant to this subsection (1) shall at least include the substance of that which is required by what is known as the convention blank form for hospital, medical, and dental service or indemnity corporations adopted from year to year by the national association of insurance commissioners, including any instructions, procedures, and guidelines not in conflict with any provision of this title for completing the convention blank form.

(b) In preparing the statements required by paragraph (a) of this subsection (1), all insurance companies shall follow the instructions, procedures, and guidelines of the national association of insurance commissioners. If the initial application of any such instruction, procedure, or guideline would cause a reduction in the total capital and surplus of a domestic insurer of ten percent or more or would cause the capital and surplus of a domestic insurer to fall to or below the company action level as defined by the commissioner by rule, such insurer may, within thirty days after the effective date of such instruction, procedure, or guideline, file with the commissioner a request to phase in the effect of the instruction, procedure, or guideline over a period not to exceed three years or a time period approved by the commissioner.

(c) Any request made pursuant to paragraph (b) of this subsection (1) shall include a complete analysis, in a form prescribed by the commissioner, of the impact upon the insurer making the request that is expected to result from application of the subject instruction, procedure, or guideline and, if a phase-in is requested, a description of the insurer's plan for the phase-in period. The commissioner shall not deny a request for a phase-in except upon notice and the opportunity for a hearing as provided in section 24-4-105, C.R.S.

(d) Any request for a hearing made pursuant to paragraph (c) of this subsection (1) shall include a description of the basis on which relief is sought. Upon receiving such a request, the commissioner shall postpone the effective date of the subject instruction, procedure, or guideline pending the conclusion of the hearing and the taking of final agency action thereon. The hearing shall commence within sixty days after the commissioner receives the request and shall be conducted in accordance with section 24-4-105, C.R.S.

(2) **Health maintenance organizations.** (a) Every health maintenance organization shall annually, on or before March 1, file a report verified by at least two principal officers with the commissioner with a copy to the executive director covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commissioner and shall include:

(I) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent public accountant;

(II) Any material changes in the information submitted pursuant to section 10-16-401 (3);

(III) The number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(IV) A summary of information compiled pursuant to section 10-16-402 (1) (b) (III) in such form as required by the executive director;

(V) Such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the commissioner's duties under this part 1 and part 4 of this article.

(c) and (d) Repealed.

(e) Each health maintenance organization shall report to the commissioner within five days of receipt or determination of a noncompliance order issued by the United States



department of health and human services. Each health maintenance organization shall report to the commissioner within five days of receipt of determination by the United States department of health and human services or the health maintenance organization or a creditor or guarantor as to repayment schedule of loans or modification of financial commitments. The report shall include any determination for the ensuing twelve-month period. Upon providing such report, the health maintenance organization shall submit a revised financial statement recognizing the appropriate amounts as a direct liability.

(3) **Prepaid dental care plan organizations.** (a) Every prepaid dental care plan organization subject to this part 1 and part 5 of this article shall file with the commissioner annually, on or before March 1, a report verified by at least two principal officers covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commissioner and shall include:

(I) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent public accountant;

(II) Any material changes in the information submitted pursuant to section 10-16-503 (1);

(III) The number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(IV) Statistics relating to the cost of its operations, the pattern of utilization of its services, and the availability and accessibility of its services;

(V) Such other information relating to the performance of the organization as is necessary to enable the commissioner to carry out the commissioner's duties under this part 1 and part 5 of this article.

(4) (a) On or before June 1 of each year, a carrier doing business in this state shall submit to the commissioner, where applicable, the following cost information for the previous calendar year:

(I) Medical trend itemized by medical provider price increases, utilization changes, medical cost shifting, and new medical procedures and technology;

(II) Medical trend itemized by pharmaceutical price increases, utilization changes, cost shifting, and the introductions of new brand and generic drugs;

(III) Dividends paid;

(IV) Executive salaries, stock options, or bonuses;

(V) Insurance producer commissions;

(VI) Payments to legal counsel;

(VII) Provision for profit and contingencies;

(VIII) Administrative expenditures with breakdowns for advertising or marketing expenditures, paid lobbying expenditures, and staff salaries;

(IX) Expenditures for disease or case management programs or patient education and other cost containment or quality improvement expenses;

(X) Charitable contributions;

(XI) Losses on investments or investment income;

(XII) Reserves on hand;

(XIII) The amount of surplus and the amount of surplus relative to the carrier's risk-based capital requirement;

(XIV) Taxes itemized by category;

(XV) Administrative ratio;

(XVI) Actual benefits ratio;

(XVII) The number of lives insured under each benefit plan the carrier offers to small employers; and

(XVIII) The cost of providing or arranging health care services.

(a.5) (I) In addition to and in conjunction with the information submitted pursuant to paragraph (a) of this subsection (4), a carrier that participates in the individual market in Colorado shall submit to the commissioner the following information:

(A) The number of applicants for a child-only plan;

(B) The number of individuals enrolled in a child-only plan; and

(C) The number of applicants denied enrollment in a child-only plan and the reasons for the denials.

(II) This paragraph (a.5) is repealed, effective January 1, 2014.

(b) A carrier licensed in multiple jurisdictions may satisfy the requirements of paragraph (a) of this subsection (4) by filing the Colorado allocated portion of national data if the actual data is not otherwise available.

(c) The commissioner shall aggregate the data submitted pursuant to paragraph (a) of this subsection (4) for all carriers and publish the information on the division's web site. The commissioner shall submit a report annually to the general assembly that analyzes the cost of health care and the factors that drive the cost of health care on an individual and group basis in this state.

(d) The commissioner shall report annually to the general assembly regarding financial information on carriers that includes, but is not limited to, benefits ratios, rate increases, and the reasons or data tracked for cost increases, as applicable for health insurance provided pursuant to this article.

**Source:** L. 92: Entire article R&RE, p. 1656, § 1, effective July 1; (1) amended, p. 1592, § 113, effective July 1. L. 94: (1) amended, p. 595, § 1, effective April 7. L. 97: (1) amended, p. 92, § 3, effective March 24. L. 99: (2)(c) and (2)(d) repealed, p. 85, § 7, effective July 1. L. 2008: (4) added, p. 2255, § 9, effective July 1. L. 2011: (4)(a.5) added, (SB 11-128), ch. 133, p. 469, § 4, effective April 29.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** (1) In 2008, subsection (4) was enacted by the "Fair Accountable Insurance Rates Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 439, Session Laws of Colorado 2008.

(2) For the legislative declaration in the 2011 act adding subsection (4)(a.5), see section 1 of chapter 133, Session Laws of Colorado 2011.

#### **10-16-112. Private utilization review - health care coverage entity responsibility.**

(1) As used in this section, unless the context otherwise requires:

(a) "Private utilization review organization" means an entity, other than a hospital or public reviewer following federal guidelines, which conducts utilization review. This definition shall not apply to any independent medical examination provided for in any policy of insurance.

(b) "Utilization review" means an evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures, and facilities, but does not include any independent medical examination provided for in any policy of insurance.

(2) Any private utilization review organization providing services to an insurance carrier, nonprofit hospital and health care service corporation, or health maintenance organization regulated pursuant to the provisions of this article is the direct representative of the insurance carrier, nonprofit hospital and health care service corporation, or health maintenance organization. Any insurance carrier, nonprofit hospital and health care service corporation, or health maintenance organization is responsible for the actions of any private utilization review organization acting within the scope of any contract and on its behalf within the scope of any contract which result in any violation of this title or any rules or regulations promulgated by the commissioner.

**Source:** L. 93: Entire section added, p. 494, § 2, effective April 26.

**10-16-113. Procedure for denial of benefits - internal review - rules.** (1) (a) A health coverage plan shall not make a determination, in whole or in part, that it will deny a request for benefits for a covered individual on the ground that such treatment or covered benefit is not medically necessary, appropriate, effective, or efficient unless such denial is made pursuant to this section.



(b) For the purposes of this section, a denial of a preauthorization for a covered benefit shall be considered a denial of a request for benefits and shall be made pursuant to the provisions of this section.

(c) If a health coverage plan denies a benefit because the treatment is an excluded benefit and the claimant presents evidence from a medical professional licensed pursuant to the "Colorado Medical Practice Act", article 36 of title 12, C.R.S., or, for dental plans only, a dentist licensed pursuant to the "Dental Practice Law of Colorado", article 35 of title 12, C.R.S., acting within his or her scope of practice, that there is a reasonable medical basis that the contractual exclusion does not apply to the denied benefit, such evidence establishes that the benefit denial is subject to the appeals process. The denial of such benefit shall be subject to the appeals provisions of this section and section 10-16-113.5.

(2) Following a denial of a request for benefits by the health coverage plan, such plan shall notify the covered person in writing. The content of such notification and the deadlines for making such notification shall be made pursuant to regulations promulgated by the commissioner.

(3) (a) (I) All denials of requests for reimbursement for medical treatment, standing referrals, or other benefits on the ground that such treatment or covered benefit is not medically necessary, appropriate, effective, or efficient shall include:

(A) An explanation of the specific medical basis for the denial;

(B) The specific reasons for the adverse determination;

(C) Reference to the specific health coverage plan provisions on which the determination is based;

(D) A description of the health coverage plan's review procedures and the time limits applicable to such procedures and shall advise the covered person and the covered person's designated representative of the right to appeal such decision; and

(E) A description of any additional material or information necessary, if any, for the covered person and the covered person's designated representative to perfect the request for benefits and an explanation of why such material or information is necessary.

(II) In the case of an adverse benefit determination by health coverage plan:

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, the carrier shall furnish the covered person and the covered person's representative with either the specific rule, guideline, protocol, or other similar criterion or a statement that such rule, guideline, protocol, or other criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the covered person and the covered person's designated representative upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, the carrier shall furnish the covered person and the covered person's designated representative with either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the covered person's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(III) In the event of an adverse benefit determination by a health coverage plan concerning a request involving urgent care, a carrier:

(A) Shall provide a description of the expedited review process applicable to such requests to the covered person and the covered person's designated representative; and

(B) May communicate the other information required pursuant to subparagraph (I) of this paragraph (a) to the covered person orally within the time frame outlined in 29 CFR 2560.503-1 (f) (2) (i) so long as a written or electronic copy of such information is furnished to the covered person no later than three days after the oral notification.

(b) (I) For the purposes of this paragraph (b), a "health coverage plan" does not include insurance arising out of the "Workers' Compensation Act of Colorado" or other similar law, automobile medical payment insurance, or property and casualty insurance. A health coverage plan shall specify that an appeal from the denial of a request for covered benefits on the ground that such benefits are not medically necessary, appropriate, effective, or efficient shall include a two-level internal review of the decision, followed by the right of the covered person to request an external review under section 10-16-113.5. The covered

person shall have the option of choosing whether to utilize the voluntary second-level internal appeal process. The commissioner shall promulgate rules for such benefits denials that reflect the requirements in 29 CFR 2560.503-1 (a) to (j). In addition, the commissioner shall promulgate rules specifying the elements of and timelines for external review appeals procedures, including but not limited to the review of appeals requiring expedited reviews and authorizations by the covered individual requesting an independent external review for access to medical records necessary for the conduct of the external review. The commissioner shall consult with and utilize public and private resources, including but not limited to health care providers, in the development of such rules.

(II) and (III) (Deleted by amendment, L. 2003, p. 1384, § 1, effective January 1, 2004.)

(IV) The carrier shall notify the covered person of his or her right to appeal a denial of benefits through a two-level internal review process and that the second level of internal review may be utilized at the option of the covered person.

(V) The first-level appeal shall be evaluated by a physician who shall consult with an appropriate clinical peer or peers, unless the reviewing physician is a clinical peer; except that, in the case of dental care, the first-level appeal may be evaluated by a dentist, who shall consult with an appropriate clinical peer or peers, unless the reviewing dentist is a clinical peer. The physician or dentist and clinical peers shall not have been involved in the initial adverse determination. A person who was previously involved with the denial may answer questions.

(VI) (A) The second-level internal review of an appeal from the denial of a request for covered benefits shall be reviewed by a health care professional who has appropriate expertise, who was not previously involved in the appeal, and who does not have a direct financial interest in the appeal or outcome of the review.

(B) The health coverage plan shall allow the covered person to be present for the second-level internal review, either in person or by telephone conference. The covered person shall have the opportunity to bring counsel, advocates, and health care professionals to the review, to prepare in advance for the review, and to present materials to the health care professional prior to the review and at the time of the review. The health coverage plan and the covered person shall, upon request, provide a copy of the materials it presents at the review to the other party at least five days prior to the review. If new information is developed after the five-day deadline, such material may be presented when practicable. The health coverage plan shall notify the covered person that the plan shall make an audio or video recording of the review unless neither the covered person nor the health coverage plan wants the recording made. The health coverage plan shall make such recording available to the covered person. If there is an external review, the audio or video recording shall, at the request of either party, be included in the material provided by the carrier to the reviewing entity.

(4) All written denials of requests for covered benefits on the ground that such benefits are not medically necessary, appropriate, effective, or efficient shall be signed by a licensed physician familiar with standards of care in Colorado. In the case of written denials of requests for covered benefits for dental care, a licensed dentist familiar with standards of care in Colorado may sign the written denial.

(5) A covered person's health care provider may communicate with the physician or dentist involved in the initial decision to deny reimbursement for or coverage of medical treatment or other benefits.

(6) (Deleted by amendment, L. 2003, p. 1384, § 1, effective January 1, 2004.)

(7) Nothing in this section shall preclude or deny the right of the covered individual to seek any other remedy or relief.

**Source:** L. 97: Entire section added, p. 1334, § 1, effective July 1. L. 99: (3) amended, p. 320, § 4, effective July 1; (3) amended, p. 1047, § 1, effective June 1, 2000. L. 2003: (1) to (4), (6), and (7) amended, p. 1384, § 1, effective January 1, 2004. L. 2004: (3)(b)(I) amended, p. 988, § 7, effective August 4. L. 2005: (1)(c), (3)(b)(IV), (3)(b)(V), and (3)(b)(VI) added and (3)(b)(I) amended, p. 803, §§ 1, 2, effective January 1, 2006. L. 2008: (3)(b)(V), (4), and (5) amended, p. 83, § 1, effective August 5.



**Editor's note:** Amendments to subsection (3) by House Bill 99-1306 and Senate Bill 99-141 were harmonized.

**Cross references:** For the legislative declaration contained in the 1999 act amending subsection (3), see section 1 of chapter 111, Session Laws of Colorado 1999.

**10-16-113.5. Independent external review of benefit denials - legislative declaration - definitions.** (1) The general assembly hereby finds, determines, and declares that, in the interest of improving accountability for health care coverage decisions, covered individuals should have the option of an independent external review by qualified experts when they have been denied a request for coverage pursuant to their health plan's procedures for denial of benefits required by section 10-16-113.

(2) As used in this section, unless the context otherwise requires:

(a) (I) "Covered individual requesting an independent external review" means a covered person who:

(A) Has gone through at least one of the internal appeals review levels offered by a health coverage plan and established pursuant to section 10-16-113 (3) and who has requested an independent external review of a health coverage plan's decision to deny reimbursement for or coverage of medical treatment that is a covered benefit on the grounds that such treatment is not medically necessary, medically appropriate, medically effective, or medically efficient; or

(B) Has pursued an expedited review of a denial of a benefit pursuant to state regulation.

(II) The term "covered individual requesting an independent external review" shall also include the designated representative of a covered individual requesting an independent external review.

(b) "Expedited review" means a review following completion of procedures for expedited internal review of an adverse determination involving a situation where the time frame of the standard independent external review procedures would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

(c) (I) "Expert reviewer" means a physician or other appropriate health care provider assigned by an independent external review entity to conduct an independent external review. An expert reviewer shall not:

(A) Have been involved in the covered individual's care previously;

(B) Be a member of the board of directors of the health coverage plan;

(C) Have been previously involved in the review process for the covered individual requesting an independent external review;

(D) Have a direct financial interest in the case or in the outcome of the review; or

(E) Be an employee of the health coverage plan.

(II) Physicians or other appropriate health care providers who are expert reviewers shall:

(A) Be experts in the treatment of the medical condition of the covered individual requesting an independent external review and knowledgeable about the recommended treatment or service that is the subject of the review through the expert's actual, current clinical experience;

(B) Hold a license issued by a state and, for physicians, a current certification by a recognized American medical specialty board in the area appropriate to the subject of review; and

(C) Have no history of disciplinary action or sanction, including loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(d) (I) "Health coverage plan" has the same meaning as set forth in section 10-16-102 (22.5).

(II) "Health coverage plan" does not include insurance arising out of the "Workers' Compensation Act of Colorado" or other similar law, automobile medical payment insurance, property and casualty insurance, or insurance under which benefits are payable with

or without regard to fault and which is required by law to be contained in any liability insurance policy or equivalent self-insurance.

(e) “Independent external review entity” means an entity that meets the requirements of this section and is certified by the commissioner to conduct independent external reviews of determinations by a plan to deny a request for reimbursement for or coverage of medical treatment that is a covered benefit for a covered individual on the grounds that such treatment or covered benefit is not medically necessary, medically appropriate, medically effective, or medically efficient. The independent external review entity may not review health coverage plan decisions to deny a request for reimbursement for or coverage of a medical treatment that is not a covered benefit. The independent external review entity may review health care coverage plan decisions to deny a request for reimbursement or coverage of a medical treatment on the grounds that it is an experimental or investigational procedure, but only if such procedure is not explicitly listed as an excluded benefit in the policy. Where a specific procedure is a listed excluded benefit, the plan shall deny coverage on the grounds that it is not a covered benefit and this shall not be reviewable by the independent external review entity.

(f) “Medical and scientific evidence” includes, but is not limited to, the following sources:

(I) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(II) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the national institute of health’s national library of medicine for indexing in index medicus, excerpta medicus (“EMBASE”), medline, and MEDLARS data base of health services technology assessment research (“HSTAR”);

(III) Medical journals recognized by the United States secretary of health and human services, pursuant to section 1861 (t) (2) of the federal “Social Security Act”;

(IV) The following standard reference compendia:

(A) The American hospital formulary service-drug information;

(B) The American medical association drug evaluation;

(C) The American dental association accepted dental therapeutics; and

(D) The United States pharmacopoeia - drug information.

(V) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including the federal agency for health care policy and research, national institutes of health, the national cancer institute, the national academy of sciences, the health care financing administration, the congressional office of technology assessment, and the national board recognized by the national institutes of health for the purpose of evaluating the medical value of health services.

(3) Health coverage plans shall make available an independent external review process that meets the requirements of this section. The cost of an independent external review shall be paid by the health coverage plan.

(4) (a) To qualify for certification by the commissioner as an independent external review entity, such entity shall meet the following requirements:

(I) The independent external review entity shall ensure that cases are reviewed by expert reviewers knowledgeable about the recommended treatment or service through the expert reviewers’ actual, current clinical experience and who have appropriate expertise in the same or similar specialties as would typically manage the case being reviewed.

(II) The independent external review entity shall ensure that the decision is based upon a case review that includes a review of the medical records of the covered individual requesting an independent external review and a review of relevant medical and scientific evidence.

(III) The independent external review entity shall have a quality assurance procedure that ensures the timeliness and quality of the reviews conducted pursuant to this section, the qualifications and independence of the expert reviewers, and the confidentiality of medical records and review materials.



(IV) The independent external review entity shall maintain patient confidentiality pursuant to Colorado and federal law.

(b) In addition to the requirements set forth in paragraph (a) of this subsection (4), the commissioner shall only certify an independent external review entity that:

(I) Is not a subsidiary of, or owned or controlled by, a carrier, trade association of carriers, or a professional association of health care providers;

(II) Maintains documentation available for review by the division of insurance upon request that shall include the following:

(A) The names of all stockholders and owners of more than five percent of such stock or options;

(B) The names of all holders of bonds or notes in amounts in excess of one hundred thousand dollars;

(C) The names of all corporations and organizations that the independent external review entity controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's business activities;

(D) The names of all directors, officers, and executives of the independent external review entity and a statement regarding any relationship the directors, officers, or executives may have with any health coverage plan or carrier;

(III) Does not have any material professional, family, or financial conflict of interest with:

(A) The health coverage plan or any officer, director, or executive of the health coverage plan. This requirement shall not prohibit a physician or qualified health care professional who contracts with the health coverage plan as a participating provider from serving on a review panel of the independent external review entity if the physician or qualified health care professional meets the requirements of paragraph (c) of subsection (2) of this section. If a participating provider serves on the panel reviewing the case of a covered individual requesting an independent external review, the covered individual requesting an independent external review shall be notified that a health care professional serving on the review panel has a contract as a participating provider with the health coverage plan.

(B) The physician or physician's medical group that treated the covered individual requesting an independent external review;

(C) The institution at which the treatment or service would be provided;

(D) The development or manufacture of the principal drug, device, procedure, treatment, or service proposed for the covered individual requesting an independent external review whose treatment is under review; or

(E) The covered individual requesting an independent external review.

(c) Nothing in subparagraph (III) of paragraph (b) of this subsection (4) shall be construed to include affiliations that are limited to staff privileges at a health care institution.

(d) The commissioner shall promulgate such rules as are necessary for the certification of independent external review entities under this section. The commissioner may deny, suspend, or revoke the certification of an independent external review entity that does not comply with the requirements of this section. The commissioner shall have the authority to contract with any person or entity to develop the certification rules and for administration of the certification program. The commissioner shall consult with and utilize public and private resources, including but not limited to health care providers, in the development of such rules.

(5) Upon receipt of a request from a covered person requesting an independent external review of a denial, the health care coverage plan shall contact the division of insurance. The division of insurance or its contractor shall inform the health care coverage plan of the name of the certified independent external review entity to which the appeal should be sent.

(6) All health coverage plan materials dealing with the plan's grievance procedures shall advise covered persons in writing of the availability of an independent external review process, the circumstances under which a covered individual requesting an independent external review may use the independent external review process, the procedures for requesting an independent external review, and the deadlines associated with an independent external review.

(7) A covered individual requesting an independent external review shall make such request within sixty calendar days after receiving notification of a second-level appeal denial of coverage for such treatment or service. Such notification of the denial of coverage shall include a notification of the person's right to an independent external review. A covered individual requesting an independent external review shall notify the plan if the covered individual requesting an independent external review requests an expedited review.

(8) After receipt of a written request for an independent external review, a health coverage plan shall notify the covered individual requesting an independent external review in writing. Such notification shall include descriptive information on the certified independent external review entity that the division of insurance or its contractor has selected to conduct the independent external review.

(9) (a) The health coverage plan shall provide to the certified independent external review entity a copy of the following documents after the division of insurance or its contractor has selected a certified independent external review entity for the case:

(I) Any information submitted to the health coverage plan by a covered individual requesting an independent external review or the physician or other health care professional of the covered individual seeking an independent external review in support of the request of the covered individual requesting an independent external review for coverage under the health coverage plan's procedures. The certified independent external review entity shall maintain the confidentiality of any medical records submitted pursuant to this subsection (9).

(II) A copy of any relevant documents used by the plan to determine the medical necessity, medical appropriateness, medical effectiveness, or medical efficiency of the proposed service or treatment, and a copy of any denial letters issued by the plan concerning the individual case under review. The health coverage plan shall provide, upon request to the covered individual requesting an independent external review, all relevant information supplied to the independent external review entity that is not confidential or privileged under state or federal law concerning the individual case under review.

(b) The certified independent external review entity shall notify the covered individual requesting an independent external review, the physician or other health care professional of the covered individual requesting an independent external review, and the health coverage plan of any additional medical information required to conduct the review after receipt of the documentation required pursuant to this section. The covered individual requesting independent external review or the physician or other health care professional of the covered individual requesting an independent external review shall submit the additional information, or an explanation of why the additional information is not being submitted, to the certified independent external review entity and the health coverage plan after the receipt of such a request. The health coverage plan may, at its discretion, determine that additional information provided by the covered individual requesting independent external review or the physician or other health care professional of the covered individual requesting independent external review justifies a reconsideration of its denial of coverage, and a subsequent decision by the health coverage plan to provide coverage shall terminate the independent external review upon notification in writing to the certified independent external review entity and the covered individual requesting an independent external review.

(10) (a) The certified independent external review entity shall submit the expert determination to the health coverage plan, the covered individual requesting independent external review, and the physician or other health care professional of the covered individual requesting an independent external review within thirty working days after the health coverage plan has received a request for external review; except that, at the request of the expert reviewer, such deadline shall be extended by up to ten working days for the consideration of additional information required pursuant to this section. In the case of an expedited review, the determinations shall be submitted within seven working days after the health coverage plan has received a request for external review; except that, at the request of the expert reviewer, the deadline shall be extended for five working days for the consideration of additional information required pursuant to this section.



(b) The expert reviewer's determination shall be in writing and state the reasons the requested treatment or service should or should not be covered. The expert reviewer's determinations shall specifically cite the relevant provisions in the health coverage plan documentation, the specific medical condition of the covered individual requesting an independent external review, and the relevant documents provided pursuant to this section to support the expert reviewer's determination. The expert reviewer's determination shall be based on an objective review of relevant medical and scientific evidence.

(c) Determinations shall also include:

- (I) The titles and qualifying credentials of the persons conducting the review;
- (II) A statement of the understanding of the persons conducting the review of the nature of the grievance and all pertinent facts;
- (III) The rationale for the decision;
- (IV) Reference to medical and scientific evidence and documentation considered in making the determination; and
- (V) In cases involving a determination adverse to the covered individual requesting an independent external review, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination.

(11) The determinations of the expert reviewer shall be binding on the health coverage plan and on the covered individual requesting independent external review. A determination of the expert reviewer in favor of the covered individual requesting independent external review shall create a rebuttable presumption in any subsequent action that the health coverage plan's coverage determination was not appropriate. A determination of the expert reviewer in favor of the health coverage plan shall create a rebuttable presumption in any subsequent action that the health coverage plan's coverage determination was appropriate.

(12) Where an expert determination is made in favor of the covered individual requesting an independent external review, coverage for the treatment and services required under this section shall be provided subject to the terms and conditions applicable to benefits under the health coverage plan.

(13) A certified independent external review entity and an expert reviewer assigned by such independent external review entity to conduct a review pursuant to this section shall be immune from civil liability in any action brought by any person based upon the determinations made pursuant to this section. This subsection (13) shall not apply to an act or omission of the independent external review entity that is made in bad faith or involves gross negligence.

(14) Nothing in this section shall make the health coverage plan liable for damages arising from any act or omission of the certified independent external review entity.

(15) A health coverage plan may require a surety bond to indemnify the health coverage plan for the certified independent external review entity's noncompliance with this section.

**Source: L. 99:** Entire section added, p. 1048, § 2, effective June 1, 2000. **L. 2005:** (2)(a)(I)(A) amended, p. 805, § 3, effective January 1, 2006.

**10-16-113.7. Reporting the denial of benefits to division.** Each carrier shall report the number and outcome of second-level internal appeals pursuant to section 10-16-113 to the division by February 1 of each year. On at least an annual basis, the division shall compile the information reported by each carrier along with the number and outcome of third-level external appeals of each health coverage plan and make such information available on the division web site and for public inspection. The commissioner may specify the format in which the information shall be submitted by a carrier.

**Source: L. 2005:** Entire section added, p. 805, § 4, effective January 1, 2006.

**10-16-114. Short title.** Sections 10-16-114 to 10-16-117 shall be known and may be cited as the "Colorado Catastrophic Health Insurance Coverage Act".

**Source: L. 94:** Entire section added, p. 742, § 1, effective January 1, 1995.

**10-16-115. Definitions.** As used in sections 10-16-114 to 10-16-117, unless the context otherwise requires:

(1) "Catastrophic health insurance" means insurance meeting the requirements set forth in section 10-16-116 (2).

(2) "Dependent child" means an adopted or natural child of an employee who is:

(a) Under twenty-one years of age;

(b) Legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for the individual's health, guidance, or well-being and who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) So mentally or physically incapacitated that the individual cannot provide for himself or herself.

(3) "Employee" means an individual who resides in this state and is employed by an employer.

(4) "Employer" means a person or entity employing one or more individuals in this state, excluding the federal government or businesses providing health insurance coverage through a self-insured plan which has benefits equal to or greater than a catastrophic health insurance plan set forth in section 10-16-116.

**Source: L. 94:** Entire section added, p. 742, § 1, effective January 1, 1995.

**10-16-116. Catastrophic health insurance - coverage.** (1) An employer may offer catastrophic health insurance to its employees pursuant to sections 10-16-114 to 10-16-117. Employees who elect such coverage shall pay the cost of the insurance pursuant to section 10-16-117.

(2) Each catastrophic health insurance policy issued pursuant to subsection (1) of this section is required to:

(a) Be issued to the employer unless issued as an individual plan pursuant to section 10-16-105.2 (1) (d);

(b) In order to be considered a qualified higher deductible plan for purposes of a medical savings account pursuant to section 39-22-504.7, C.R.S., or other provisions of state law, meet the requirements for a qualifying plan for a medical savings account under federal law and have a minimum deductible of at least one thousand five hundred dollars but no more than two thousand two hundred fifty dollars for individual coverage or at least three thousand dollars but no more than four thousand five hundred dollars for family coverage;

(c) Offer coverage for the spouse and dependent children of the insured employee;

(d) Cover all employees who elect coverage and are not otherwise covered by medicare or another health insurance policy;

(e) For group coverage, cover an employee and eligible dependents regardless of health status; except that a business group of one may be restricted to obtaining coverage during an open enrollment period as specified by section 10-16-105 (7.3) (i);

(f) Be priced according to appropriate rating requirements for health benefit plans as specified by law;

(g) Provide a clearly written contract of coverage, including a list of procedures covered under the policy;

(h) For group coverage, include a portability clause which provides that:

(I) When an employee leaves employment for any reason the employee, the employee's spouse, and the employee's dependent children may each elect to continue coverage or convert coverage to an individual policy pursuant to section 10-16-108; and

(II) Conversion benefits shall be the insured's choice of the same catastrophic coverage issued, without evidence of insurability, as an individual policy or the conversion coverage specified in section 10-16-108;

(i) Comply with requirements for health benefit plans specified in this article, including those related to preexisting conditions in accordance with section 10-16-118.

(3) Insurers shall provide a written disclosure to a covered person that indicates the mandated benefits of section 10-16-104 (1), (1.7), (5), (5.5), (8), (9), (10), (11), (12), (13),



(14), and (18) (b) (III) are covered benefits of the high deductible health plan offered pursuant to section 10-16-105 (7.2) (b) (II); except that the mandated benefits for mammography, prostate screenings, child health supervision services, and prosthetic devices shall be subject to policy deductibles.

**Source:** **L. 94:** Entire section added, p. 742, § 1, effective January 1, 1995; (2) amended, p. 1917, § 10, effective July 1. **L. 2000:** (2)(a), (2)(b), (2)(e), (2)(f), IP(2)(h), and (2)(h)(II) amended and (2)(i) added, p. 171, § 1, effective January 1, 2001. **L. 2002:** (3) added, p. 1293, § 4, effective January 1, 2003. **L. 2004:** (1), (2)(a), (2)(b), (2)(d), (2)(g), (2)(h)(II), and (3) amended, p. 989, § 8, effective August 4. **L. 2007:** (3) amended, p. 451, § 4, effective January 1, 2008. **L. 2009:** (3) amended, (HB 09-1204), ch. 344, p. 1808, § 5, effective January 1, 2010.

**Cross references:** For the legislative declaration contained in the 2009 act amending subsection (3), see section 1 of chapter 344, Session Laws of Colorado 2009.

#### **10-16-117. Premium payments - pre-tax - election - reporting requirements.**

(1) When catastrophic health insurance is purchased pursuant to sections 10-16-114 to 10-16-117, the employer, at its option, may pay all or a part of such cost.

(2) If claiming an exclusion of premium payments for state income tax purposes pursuant to section 39-22-104.5, C.R.S., an employee shall elect to purchase catastrophic health insurance by signing a written election. Such election shall be in the form prescribed by the executive director of the department of revenue and shall be signed prior to the date the employer withholds the first contribution.

(3) An employer shall withhold the premium payments for catastrophic health insurance from the wages of an employee who has elected coverage pursuant to subsection (2) of this section and shall remit the premiums to the insuring entity on the employee's behalf. All such premiums collected by an employer are withheld from the employee's wages on a pre-tax basis pursuant to section 39-22-104.5, C.R.S.

(4) An employer withholding premium payments from an employee's wages pursuant to subsection (3) of this section shall report the amount withheld to the department of revenue, pursuant to rules promulgated by such department.

**Source:** **L. 94:** Entire section added, p. 742, § 1, effective January 1, 1995. **L. 2004:** Entire section amended, p. 990, § 9, effective August 4.

#### **10-16-118. Limitations on preexisting condition limitations.** (1) A health coverage plan that covers residents of this state:

(a) (I) If it is a group health benefit plan, shall not deny, exclude, or limit benefits for a covered individual because of a preexisting condition for losses incurred more than six months following the date of enrollment of the individual in such plan or, if earlier, the first day of the waiting period for such enrollment; except that, for business groups of one, a health benefit plan shall not deny, exclude, or limit benefits for a covered individual because of a preexisting condition for losses incurred more than twelve months following the date of enrollment of the individual in such plan. A group health benefit plan may impose a preexisting condition exclusion or limitation only if such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within six months immediately preceding the date of enrollment of the individual in such plan or, if earlier, the first day of the waiting period for such enrollment; except that a group health benefit plan shall not impose any preexisting condition exclusion in the case of a child that is adopted or placed for adoption before attaining eighteen years of age, or relating to pregnancy.

(II) If it is an individual health benefit plan, or a group health coverage plan to which subparagraph (I) of this paragraph (a) does not apply, shall not deny, exclude, or limit benefits for a covered individual because of a preexisting condition for losses incurred more than twelve months following the effective date of coverage and may not define a

preexisting condition more restrictively than an injury, sickness, or pregnancy for which a person incurred charges, received medical treatment, consulted a health care professional, or took prescription drugs within twelve months.

(III) If it is a health maintenance organization that does not utilize preexisting condition limitations in any health benefit plan, may impose an affiliation period. An affiliation period shall run concurrently with any waiting period. Such a health maintenance organization may, in lieu of an affiliation period, use an alternative method to address adverse selection with the prior approval of the commissioner.

(b) Shall waive any affiliation period or time period applicable to a preexisting condition exclusion or limitation period for the period of time an individual was previously covered by creditable coverage if such creditable coverage was continuous to a date not more than ninety days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period for the effective date of the new coverage. This paragraph (b) shall not preclude application of any waiting period applicable to all new enrollees under the plan. The method of crediting and certifying coverage shall be determined by the commissioner by rule.

(c) Shall exclude coverage for late enrollees for the greater of twelve months or for no more than an eighteen-month-preexisting condition exclusion; except that, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed eighteen months from the date the individual enrolls for coverage under the health benefit plan. Health maintenance organizations that do not use preexisting condition exclusion periods in any of their plans may impose up to a three-month affiliation period in lieu of the eighteen-month preexisting condition period.

**Source:** **L. 94:** Entire section added, p. 1913, § 9, effective July 1. **L. 97:** Entire section amended, p. 639, § 7, effective July 1. **L. 2002:** (1)(a)(I) amended, p. 1284, § 3, effective January 1, 2003; (1)(a)(I) amended, p. 1293, § 5, effective January 1, 2003.

**Cross references:** For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 154, Session Laws of Colorado 1997.

#### ANNOTATION

**Subsection (1)(a)(II) applies only to the general category of preexisting conditions** for one year after the effective date of an individual health coverage plan and can be construed to permanently allow the limitation, denial, or ex-

clusion of benefits if coverage for a condition is explicitly excluded from such plan. *Usick v. Am. Family Mut. Ins. Co.*, 131 P.3d 1195 (Colo. App. 2006).

**10-16-119. Requirements for excess loss insurance used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act".** (1) Any entity issuing excess loss insurance shall file all policy forms with the division and certify compliance with the provisions of this title.

(2) All excess loss insurance shall be issued to cover the employer's liability under the employer's self-insured obligation. Excess loss insurance shall meet the following requirements:

(a) The policy shall only be issued to insure an employer and not the employer's employees;

(b) Payment by the issuer of the insurance shall only be made to the employer and not the employees or providers;

(c) Commencing with policies issued or renewed on and after January 1, 2003, the minimum retention to the employer shall be no less than fifteen thousand dollars per person per plan year with a minimum one hundred twenty percent of expected claims aggregate.

**Source:** **L. 94:** Entire section added, p. 1913, § 9, effective July 1. **L. 2002:** (2)(c) amended, p. 1293, § 6, effective January 1, 2003.



**10-16-120. Legislative review of requirements for guaranteed issue of basic and standard health benefit plans. (Repealed)**

**Source:** L. 94: Entire section added, p. 1913, § 9, effective July 1. L. 96: (1) amended, p. 1230, § 52, effective August 7. L. 97: (1) amended, p. 1478, § 25, effective June 3. L. 2001: (2) amended, p. 1167, § 2, effective July 1. L. 2006: Entire section repealed, p. 1077, § 4, effective July 1.

**Cross references:** For the legislative declaration contained in the 2006 act repealing this section, see section 1 of chapter 236, Session Laws of Colorado 2006.

**10-16-121. Required contract provisions in contracts between carriers and providers.** (1) A contract between a carrier and a provider or its representative concerning the delivery, provision, payment, or offering of care or services covered by a managed care plan shall make provisions for the following requirements:

(a) The contract shall contain a provision stating that neither the provider nor the carrier shall be prohibited from protesting or expressing disagreement with a medical decision, medical policy, or medical practice of the carrier or provider.

(b) The contract shall contain a provision that states the carrier shall not terminate the contract with a provider because the provider expresses disagreement with a carrier's decision to deny or limit benefits to a covered person or because the provider assists the covered person to seek reconsideration of the carrier's decision or because a provider discusses with a current, former, or prospective patient any aspect of the patient's medical condition, any proposed treatments or treatment alternatives, whether covered by the plan or not, policy provisions of a plan, or a provider's personal recommendation regarding selection of a health plan based on the provider's personal knowledge of the health needs of such patients.

(c) Any contract providing for the performance of claims processing functions by an entity with which the carrier contracts shall require such entity to comply with section 10-16-106.5 (3), (4), and (5).

(d) The contract shall contain a provision that the provider shall not be subjected to financial disincentives based on the number of referrals made to participating providers in the health plan for covered benefits so long as the provider making the referral adheres to the carrier's or the carrier's intermediary's utilization review policies and procedures.

(2) Nothing in subsection (1) of this section shall be construed to prohibit a carrier from:

(a) Including in its provider contracts a provision that precludes a provider from making, publishing, disseminating, or circulating directly or indirectly or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature that is false or maliciously critical of the carrier and calculated to injure such carrier; or

(b) Terminating a contract with a provider because such provider materially misrepresents the provisions, terms, or requirements of a carrier's products; or

(c) Terminating a contract with a provider pursuant to a contract provision that allows either party to the contract to terminate the contract without cause pursuant to specific notice requirements that are the same for both parties.

(3) Each contract between a carrier and an intermediary shall contain a provision requiring that the underlying contract authorizing the intermediary to negotiate and execute contracts with carriers, on behalf of the providers, shall comply with the requirements of subsection (1) of this section.

(4) The commissioner shall not act to arbitrate, mediate, or settle disputes between a carrier, its intermediaries, or a provider network arising under or by reason of a provider contract or its termination. Existing dispute resolution mechanisms available in contract law shall be used to resolve such disputes. Notwithstanding any provision of law to the contrary, the commissioner is not prohibited from enforcing the applicable provisions of this article.

(5) The commissioner shall, after notice and hearing, promulgate reasonable regulations as are necessary or proper to carry out the requirements of this section.

(6) No contract between a carrier and a provider or its representative or between a carrier and an intermediary that concerns the delivery, provision, payment, or offering of care or services covered by a managed care plan shall be issued, renewed, amended, or extended in this state after January 1, 1997, unless it complies with the requirements of this section.

**Source:** **L. 96:** Entire section added, p. 569, § 3, effective July 1. **L. 99:** (1)(c) added, p. 1142, § 3, effective January 1, 2000. **L. 2000:** (1)(d) added, p. 1064, § 2, effective August 2, 2000. **L. 2003:** (4) amended, p. 2494, § 2, effective June 5.

**Cross references:** For the legislative declaration contained in the 1996 act enacting this section, see section 1 of chapter 122, Session Laws of Colorado 1996. For the legislative declaration contained in the 2000 act enacting subsection (1)(d), see section 1 of chapter 238, Session Laws of Colorado 2000.

#### ANNOTATION

**This section and § 10-16-705 (7) are expressions of the intent of the general assembly that termination clauses should be permitted in contracts between doctors and**

**health care providers.** Grossman v. Columbine Medical Group, Inc., 12 P.3d 269 (Colo. App. 1999).

**10-16-122. Access to prescription drugs.** (1) Except as provided in section 25.5-5-404 (1) (u), C.R.S., any pharmacy benefit management firm or intermediary whose contract with a carrier, as defined in section 10-16-102 (8), includes an open network shall allow participation by each pharmacy provider in the contract service area. If a pharmacy benefit management firm or intermediary offers an open network, the pharmacy benefit management firm or intermediary may offer such network on a regional or local basis.

(2) For purposes of this section, "open network" means any pharmacy network created by a pharmacy benefit management firm or intermediary through a contracting process with pharmacy providers that does not include competitive bidding and allows participation by any pharmacy provider that agrees to the terms and conditions of the contract offered by the pharmacy benefit management firm or intermediary.

(3) A pharmacy benefit management firm or intermediary shall not be prohibited from contracting with exclusive pharmacy networks if, sixty days before the termination or effective date of an exclusive pharmacy network contract between the pharmacy providers and the pharmacy benefit management firm or intermediary, notice of such termination or of the effective date of an exclusive pharmacy network contract is published in one or more newspapers of general circulation in the affected contract service area. Notice shall include information about where in Colorado a copy of the pharmacy provider selection criteria may be obtained.

(4) (a) No pharmacy benefit manager or carrier offering a managed care plan shall transfer or request that a pharmacy provider transfer the prescription or prescriptions of a covered person or subscriber, wholly or in part, to a different participating pharmacy provider than the provider selected by the covered person or subscriber unless one or more of the following conditions have been met:

(I) The participating pharmacy provider to whom the covered person or subscriber's prescription is to be transferred or the carrier or pharmacy benefit manager has obtained a document, signed by the covered person or subscriber, that contains a clear, conspicuous, and unequivocal request by the covered person or subscriber for a change of provider;

(II) The participating pharmacy provider carrier or pharmacy benefit manager to whom the covered person or subscriber's prescription is to be transferred has obtained the covered person or subscriber's oral authorization for the transfer and is able to furnish proof of such authorization through verification by an independent third party or an electronic record; or

(III) The pharmacy provider's participation in the pharmacy network of the carrier or pharmacy benefit manager has changed and the pharmacy provider selected by the covered person or subscriber is no longer a participating provider in the network, provided that the covered person or subscriber has been notified of the proposed transfer of pharmaceutical



care services and is given an opportunity to affirmatively select a participating pharmacy provider other than the proposed transferee.

(b) Nothing in this subsection (4) shall require a carrier offering a managed care plan or a pharmacy benefit manager to pay for pharmaceutical benefits received from a nonparticipating provider.

**Source:** L. 98: Entire section added, p. 1188, § 1, effective August 5. L. 2001: (4) added, p. 1230, § 2, effective January 1, 2002. L. 2006: (1) amended, p. 1999, § 35, effective July 1.

**10-16-123. Telemedicine.** (1) It is the intent of the general assembly to recognize the practice of telemedicine as a legitimate means by which an individual in a rural area may receive medical services from a provider without person-to-person contact with the provider.

(2) On or after January 1, 2002, no health benefit plan that is issued, amended, or renewed for a person residing in a county with one hundred fifty thousand or fewer residents may require face-to-face contact between a provider and a covered person for services appropriately provided through telemedicine, pursuant to section 12-36-106 (1) (g), C.R.S., subject to all terms and conditions of the health benefit plan, if such county has the technology necessary for the provisions of telemedicine. Any health benefits provided through telemedicine shall meet the same standard of care as for in-person care. Nothing in this section shall require the use of telemedicine when in-person care by a participating provider is available to a covered person within the carrier's network and within the member's geographic area.

(3) A health benefit plan shall not be required to pay for consultation provided by a provider by telephone or facsimile.

**Source:** L. 2001: Entire section added, p. 1153, § 3, effective January 1, 2002.

**Cross references:** For the legislative declaration contained in the 2001 act enacting this section, see section 1 of chapter 300, Session Laws of Colorado 2001.

**10-16-124. Prescription information cards - legislative declaration.** (1) It is the intent of the general assembly to lessen patients' waiting times for prescriptions, to decrease administrative burdens for pharmacies, and to improve care to patients by minimizing confusion, eliminating unnecessary paperwork, and streamlining the dispensing of prescription drugs paid for by third party payors.

(2) Each health benefit plan that offers coverage for prescription drugs shall issue to the named insured a card or other device containing uniform prescription drug information. Such card or device shall be in the format approved by the national council for prescription drug programs, shall include all of the required and situational fields and shall conform to the most recent pharmacy identification card or device implementation guide produced by the national council for prescription drug programs.

(3) (a) A new uniform prescription, drug information card or device, as required pursuant to subsection (2) of this section, shall be issued by a carrier:

(I) When a person enrolls in a health benefit plan that offers prescription drug coverage; and

(II) When a person's coverage changes and the change affects data contained on the card or device.

(b) Newly issued cards or devices shall be updated with the latest coverage information and shall conform to the national council for prescription drug programs' standards then in effect and to the implementation guide then in use.

(4) No health maintenance organization that supplies benefits to its plan subscribers through an in-house drug or pharmacy outlet and has received a certificate of authority pursuant to part 4 of this article shall be subject to this section.

(5) The provisions of the section shall not apply to the children's basic health plan as described in article 8 of title 25.5, C.R.S.

**Source: L. 2002:** Entire section added, p. 1311, § 1, effective January 1, 2003. **L. 2006:** (5) amended, p. 1999, § 36, effective July 1.

**10-16-125. Reimbursement to nurses.** (1) In counties of the state that are neither part of a metropolitan statistical area nor a primary statistical area, a carrier offering a health benefit plan shall not discriminate between a physician and an advanced practice nurse not practicing under the direction of a physician when establishing reimbursement rates for covered services that could be provided by an advanced practice nurse or a physician.

(2) In order to improve access to primary care and choices of providers, a carrier providing a health benefit plan shall evaluate an application for status as a participating provider from an advanced practice nurse utilizing objective and reasonable criteria and shall take into account the provider-to-covered-person ratio for the covered benefits that appropriately may be provided by the advanced practice nurse. The carrier shall make a determination on an application for participating provider status submitted by an advanced practice nurse, and notify the applicant of its determination, within the same period in which the carrier makes a participating provider determination for physicians. If the application is denied, the carrier shall specify the reason for the denial. If the application is approved, the carrier shall list the advanced practice nurse in the provider directory for the health benefit plan.

**Source: L. 2002:** Entire section added, p. 1295, § 8, effective June 7. **L. 2008:** Entire section amended, p. 121, § 1, effective January 1, 2009.

**Editor's note:** This section was originally enacted as § 10-16-124 in House Bill 02-1003 but has been renumbered on revision for ease of location.

**10-16-126. Fee-for-service dental plans.** (1) Notwithstanding any provision of this title to the contrary, a fee-for-service dental plan for which premiums are not charged is not subject to the provisions of this title and the offering of such a plan shall not be considered transacting the business of insurance pursuant to section 10-3-903. The offeror of a fee-for-service dental plan shall have no liability for payment of claims and the fees paid to the provider of the services shall be paid directly by the consumer.

(2) Any offeror of such fee-for-service dental plan shall advise the consumer that the plan is not an insurance plan and that the consumer shall be solely responsible for full payment to the provider of any fees or charges incurred by the consumer.

**Source: L. 2003:** Entire section added, p. 1740, § 1, effective August 6.

**10-16-127. Coinsurance and deductibles.** A carrier subject to the provisions of parts 2, 3, and 4 of this article may offer one or more health coverage plans that contain deductibles or coinsurance without any limitation or restriction on the maximum out-of-pocket payable by the insured.

**Source: L. 2003:** Entire section added, p. 1785, § 16, effective January 1, 2004.

**Editor's note:** This section was originally numbered as § 10-16-126 but was renumbered on revision for ease of location.

**10-16-128. Annual report to general assembly.** The commissioner shall report to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or any successor committees, no later than October 1, 2004, and every October 1 thereafter. The report shall be an indication of the number, nature, and outcome of complaints against insurers during the preceding twelve months.



**Source:** L. 2003: Entire section added, p. 2494, § 3, effective June 5. L. 2007: Entire section amended, p. 2020, § 12, effective June 1.

**Editor's note:** This section was originally numbered as § 10-16-126 but was renumbered on revision for ease of location.

**10-16-129. Health savings accounts.** Any carrier authorized to conduct business in this state that offers coverage pursuant to part 2, 3, or 4 of this article may offer a high deductible health plan that would qualify for and may be offered in conjunction with a health savings account pursuant to 26 U.S.C. sec. 223, as amended. A carrier offering a high deductible health plan that may be offered in conjunction with a health savings account may apply the deductible to mandatory health benefits for mammography, prostate cancer screening, child health supervision services, and prosthetic devices pursuant to section 10-16-104 (10), (11), (14), and (18) (b) (III) if such mandatory benefits are not considered by the federal department of treasury to be preventive or to have an acceptable deductible amount.

**Source:** L. 2004: Entire section added, p. 764, § 2, effective July 1. L. 2009: Entire section amended, (HB 09-1204), ch. 344, p. 1808, § 6, effective January 1, 2010.

**Cross references:** For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 344, Session Laws of Colorado 2009.

**10-16-130. Disclosure of rate increases to public entities - legislative declaration - definitions.** (1) The general assembly hereby finds, determines, and declares that variability in premiums by carriers offering health benefit coverage to a public entity present difficulties for fiscal planning for the public entity. Therefore, it is in the best interest of the state to promote greater accountability to the public and sound fiscal policy by public entities through disclosure by health insurance carriers of information concerning the public entity's rate, loss ratio, and the total number of claims exceeding ten thousand dollars for the public entity.

(2) A carrier authorized to conduct business in this state that offers coverage pursuant to part 2, 3, or 4 of this article to a public entity, with one hundred or more employees enrolled in such coverage, shall disclose to the public entity, at the request of the public entity, once annually and concurrent with the issuance of the employer's rate renewal, the following information as it relates to the amounts of coverage being considered for calculating the renewal:

- (a) The total number of employees covered by the carrier for the public entity;
  - (b) The total dollar amount of claims paid by the carrier on behalf of the public entity;
  - (c) Total of premiums paid; and
  - (d) The number of claims that exceed ten thousand dollars for any one covered person under health benefit coverage for the public entity.
- (3) As used in this section, unless the context otherwise requires:
- (a) "Loss ratio" means the total claims paid for the coverage period divided by the total amount of premiums paid by a public entity.
  - (b) "Public entity" shall have the same meaning as that provided in section 24-10-103 (5), C.R.S.

**Source:** L. 2005: Entire section added, p. 849, § 1, effective January 1, 2006.

**10-16-131. Health care reform project - blue ribbon commission for health care reform - repeal. (Repealed)**

**Source:** L. 2006: Entire section added, p. 1626, § 2, effective June 2. L. 2007: IP(3)(a) amended and (3)(a)(IV) and (3)(b)(III) added, p. 167, §§ 1, 2, effective March 22; (2),

(3)(d)(V), (4)(a), (4)(b)(III), (4)(b)(IV), (5)(a), and (5)(c) amended and (4.5) and (5.5) added, p. 1993, § 1, effective June 1. **L. 2008:** (5.3) added and (6) amended, p. 809, § 1, effective May 14.

**Editor's note:** Subsection (6)(a) provided for the repeal of subsections (1) to (5) and (5.5), effective July 1, 2008. (See L. 2006, p. 1626.) Subsection (5.3)(b) provided for the repeal of subsection (5.3), effective July 1, 2009. (See L. 2008, p. 809.) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2009. (See L. 2008, p. 809.)

**10-16-132. Study of factors driving health care costs in Pueblo county - repeal. (Repealed)**

**Source:** **L. 2007:** Entire section added, p. 2101, § 1, effective June 4. **L. 2008:** (2)(c) amended, p. 1881, § 14, effective August 5.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective January 15, 2009. (See L. 2007, p. 2101.)

**10-16-133. Health carrier information disclosure - web site - insurance producer disclosure requirements - legislative declaration.** (1) The general assembly finds and determines that consumers deserve to know the quality and cost of their health care insurance. Health care insurance transparency provides consumers with the information necessary, and the incentive, to choose health plans based on cost and quality. The general assembly further finds that providing reliable cost and quality information about health care insurance empowers consumer choice and that consumer choice creates incentives at all levels and motivates the entire system to provide better care and benefits for less money. Therefore it is the intent of the general assembly to make information regarding the costs of health care insurance readily available to consumers through the division of insurance.

(2) The commissioner shall implement and maintain a consumer guide on the division of insurance web site that is easily accessible and available to consumers regarding each carrier authorized to do business in this state. The web site shall:

(a) Be derived from the information that each carrier is required to file with the division, except for records that are not open to public inspection pursuant to part 2 of article 72 of title 24, C.R.S.;

(b) Include such information as the commissioner determines, in his or her discretion and after soliciting input from interested parties, to be useful to consumers and purchasers of health care insurance; except that records that are not open to public inspection pursuant to part 2 of article 72 of title 24, C.R.S., shall not be included; and

(c) Include a link to the division's complaint form for use by consumers to file a complaint against a carrier and a link to the division's complaint index so that consumers may access information regarding complaints against carriers.

(3) The commissioner is authorized to include additional health plan and quality information on the web site from state or nationally recognized organizations that measure performance of health benefit plans.

(4) The commissioner shall consider alternative methods of making the consumer guide accessible to consumers who do not have internet access.

(5) An insurance producer licensed pursuant to part 4 of article 2 of this title who solicits or negotiates an application for health care insurance on behalf of a carrier shall disclose to the person purchasing the plan that the insurance producer will receive a commission from the carrier. The insurance producer shall provide the consumer with the standard compensation schedule for the product being sold. Any change to the insurance producer's compensation from the initial disclosure to the time of purchase shall be disclosed by the insurance producer to the purchaser at or before the time of sale.

**Source:** **L. 2008:** Entire section added, p. 2067, § 1, effective January 1, 2009.



**10-16-134. Health care transparency - information required - web site - definition.**

(1) On or before March 1, 2009, and on or before March 1 each year thereafter, each carrier shall submit to the division a list of the average reimbursement rates, either statewide or by geographic area, as defined by rule of the commissioner pursuant to section 10-16-104.9, for the average inpatient day or the average reimbursement rate for the twenty-five most common inpatient procedures based upon the most commonly reported diagnostic-related groups.

(2) (a) The commissioner shall post the information submitted pursuant to subsection (1) of this section on the division's web site.

(b) The division shall ensure that the web site and information is easy to navigate, contains consumer-friendly language, and fulfills the intent of this section.

(3) For purposes of this section, "diagnostic-related group" means the classification assigned to an inpatient hospital service claim based on the patient's age and sex, the principal and secondary diagnoses, the procedures performed, and the discharge status.

**Source: L. 2008:** Entire section added, p. 1265, § 4, effective May 27.

**Cross references:** In 2008, this section was enacted by the "Health Care Transparency Act". For the short title and legislative declaration, see sections 1 and 2 of chapter 294, Session Laws of Colorado 2008.

**10-16-135. Health benefit plan information cards - rules - standardization - contents.**

(1) (a) The commissioner shall adopt rules requiring every carrier providing a health benefit plan to issue to covered persons to whom a health benefit plan identification card is issued a standardized, printed card containing plan information. To the extent possible, the rules shall incorporate and not conflict with the requirements of section 10-16-124 regarding prescription information cards. The commissioner shall adopt initial rules by October 31, 2008, that describe the format of a standardized, printed card to be issued by carriers to persons covered under a health benefit plan to whom health benefit plan identification cards are issued. The rules establishing the format for the printed card shall include a standard size, shall require the card to be legible and photocopied, and shall delineate the information to be contained on the card, including, but not limited to, the following information, as applicable:

(I) The covered person's name and the applicable plan number;

(II) Copayment and deductible amounts for the most commonly used health care services;

(III) Contact information for the carrier or health benefit plan administrator; and

(IV) An indication of whether the health benefit plan is regulated by the state.

(b) The rules adopted pursuant to paragraph (a) of this subsection (1) shall require all carriers to issue a standardized, printed card to a covered person to whom a health benefit plan identification card is issued upon the purchase or renewal of or enrollment in a plan on or after July 1, 2009. No later than July 1, 2010, all carriers shall issue the standardized, printed card to covered persons to whom health benefit plan identification cards are issued.

(c) Nothing in this section shall preclude a carrier from including information on the standardized, printed cards that is in addition to the information required to be included on the card pursuant to rules adopted pursuant to this section.

(2) (a) No later than thirty days after June 3, 2008, the commissioner, in consultation with the director of the division of professions and occupations in the department of regulatory agencies and the executive director of the department of public health and environment, shall establish a work group comprised of representatives of the divisions of insurance and registrations in the department of regulatory agencies; the departments of public health and environment, personnel, and health care policy and financing; the governor's office of information technology; carriers; providers, including hospitals, physicians, and pharmacists; private businesses; consumers; and other stakeholders deemed appropriate by the commissioner. The work group shall:

(I) Make recommendations on standards for technology and tools through which information may be electronically recognized, exchanged, or transmitted between carriers

and providers, which standards shall conform to any standards adopted by a nonprofit organization that sets relevant national technical standards;

(II) Make recommendations as to the specific information that such technology and tools should be able to electronically exchange or transmit;

(III) Make recommendations to simplify eligibility and coverage verification through electronic data interchange utilizing swipe card or other appropriate technology;

(IV) Make recommendations regarding eligibility notification, preauthorization, or service notification and retroactive denial through electronic data interchange using swipe card or other appropriate technology;

(V) Make recommendations regarding how to incorporate the requirements of section 10-16-124 pertaining to uniform prescription drug information as part of the technology and tools for electronically recognizing, exchanging, or transmitting information between carriers and providers;

(VI) Make recommendations regarding whether, once electronic data interchange technology and tools are fully implemented, standardized, printed cards are necessary and, if so, what information needs to be included on the printed cards;

(VII) Make recommendations regarding when such technology could be implemented for medical assistance programs, as defined in sections 25.5-1-103 and 25.5-4-103, C.R.S.; and

(VIII) Make recommendations, if the work group so chooses, to create a pilot program for initial use of the recommended technology and tools.

(b) The work group established pursuant to paragraph (a) of this subsection (2) shall report its recommendations to the commissioner no later than six months after its first meeting; except that, if the work group is unable to complete its duties in six months, it may request that the commissioner extend the deadline by not more than an additional six months.

(c) After receipt of the work group's recommendations, the commissioner shall adopt rules to implement a standardized electronic swipe card or other appropriate technology to be used by carriers, providers, and covered persons under a health benefit plan to allow access to information regarding the applicable coverage under the plan. Carriers shall implement the new technology no later than two years after the effective date of the rules adopted pursuant to this paragraph (c); except that, if the work group concludes that carriers are unable to fully implement the technology by the deadline, the work group may recommend that the commissioner grant an extension of not more than six months for full implementation of the requirements of such rules.

(3) The rules adopted by the commissioner pursuant to this section shall conform to applicable federal guidelines on standardized claims attachment forms once such federal guidelines are adopted.

(4) The commissioner shall amend, modify, reenact, update, or otherwise revise the rules adopted pursuant to this section as necessary to reflect the most current technology available that will allow real-time data exchange, benefits eligibility, coverage determinations, and other appropriate provider-carrier transactions.

(5) Licensed or certified hospitals and physicians licensed pursuant to article 36 of title 12, C.R.S., shall use the standardized, printed card provided to covered persons and children's basic health plan enrollees and, once implemented, shall use the standardized electronic technology for accessing information about the coverage available under a health benefit plan or the children's basic health plan for a covered person or enrollee to whom health care services are or will be provided by the hospital or physician.

(6) A carrier or provider located in a rural area of the state, as determined by the commissioner, may apply to the commissioner for, and the commissioner may grant, an extension of any of the deadlines imposed by this section if meeting a particular deadline would impose a financial hardship on the rural carrier or provider. The commissioner may require the rural carrier or provider to submit documentation supporting the financial hardship claim.



**10-16-136. Wellness and prevention programs - individual and small group health coverage plans - voluntary participation - incentives or rewards - definitions - legislative declaration - repeal.** (1) The general assembly hereby finds and declares that:

(a) With the rising costs of health care coverage, it is important to find innovative ways to reduce costs and make health coverage more affordable for individuals and small employer groups;

(b) When individuals covered under a health coverage plan lead healthy lifestyles and engage in wellness and disease prevention activities, their need for health care and the costs of their health care are reduced, and the entity providing their health care coverage benefits from reduced utilization rates and costs;

(c) Carriers should be afforded the ability to develop innovative and flexible ways to encourage covered persons under their health coverage plans to engage in activities that promote their overall health and prevent or reduce the impacts of disease;

(d) It is therefore important to allow carriers to provide incentives or rewards, including premium discounts and reduced out-of-pocket costs for health care services, to encourage covered persons to participate in and satisfy a standard related to a health risk factor pursuant to wellness and prevention programs; and

(e) This section is intended to lower costs for all small groups and individuals and is not intended to increase or allow carriers to increase rates for or shift costs to those individuals and small groups that decline to participate in wellness and prevention programs offered by carriers.

(2) (a) Consistent with section 10-16-107 (6) and subject to subsection (3) of this section, a carrier offering an individual health coverage plan or a small group plan in this state may offer incentives or rewards to encourage the individual or small group and other covered persons under the plan to participate in wellness and prevention programs. For purposes of small group plans, the incentives or rewards may be applied to the entire small group or to individuals in the small group based on their participation in wellness and prevention programs. A carrier offering such incentives or rewards shall implement adequate measures to ensure that the privacy of individuals in the group is maintained and that individually identifiable health information is not shared or made available to an individual's employer or any other person not otherwise allowed access to the information under the federal "Health Insurance Portability and Accountability Act of 1996", as amended. A carrier shall not disclose to any third party, including a covered person's employer, and the covered person's employer shall not disclose, any information obtained from or about a covered person in connection with the covered person's participation in a wellness and prevention program that is reasonably attributable to the covered person, unless the covered person consents in writing to disclosure of such information.

(b) (I) Carriers may determine the types of wellness and prevention programs to offer to individuals and small groups and the incentives or rewards allowed under the health coverage plan or small group plan.

(II) Licensed health care providers, community-based wellness programs, employers, and individuals participating in an individual health coverage plan may develop wellness and prevention programs for carriers to consider in determining the types of wellness and prevention programs to offer under a health coverage plan or small group plan.

(III) The incentives or rewards that a carrier may allow under a health coverage plan or small group plan may include, but are not limited to, premium discounts or rebates; modifications to copayment, deductible, or coinsurance amounts; or a combination of these incentives or rewards.

(IV) An incentive or reward offered by a carrier under wellness and prevention programs shall be reasonably related to the program and may be:

(A) Tied only to participation in the program; or

(B) Based on satisfaction of a standard related to a health risk factor, as permitted by and in compliance with the federal "Health Insurance Portability and Accountability Act of 1996", as amended, 42 U.S.C. sec. 201 et seq., and the federal regulations implementing such act.

(c) A carrier shall not offer or sell in this state an individual or group health coverage plan that includes a wellness and prevention program, or an incentive or reward for

participation in a wellness and prevention program, that violates the federal “Health Insurance Portability and Accountability Act of 1996”, as amended, and the federal regulations implementing such act.

(d) Any wellness and prevention program, or an incentive or reward for participation in such program, offered by a carrier pursuant to this section shall comply with the federal “Americans with Disabilities Act of 1990”, as amended, 42 U.S.C. sec. 12101 et seq., and parts 3 to 8 of article 34 of title 24, C.R.S.

(3) A carrier offering incentives or rewards pursuant to this section shall ensure that:

(a) Participation in or satisfaction of a standard related to a health risk factor pursuant to a wellness and prevention program is not a condition of coverage under the health coverage plan or small group plan;

(b) Incentives or rewards are uniformly applied based on the wellness and prevention program, and not based on the size or composition of the small group participating in the program, and that there is a reasonable justification for the amount, frequency, and nature of the incentives or rewards;

(c) Participation in a wellness and prevention program is voluntary and that a penalty may not be imposed on a covered person or small group for not participating in a wellness and prevention program or not satisfying a standard related to a health risk factor pursuant to the program;

(d) Any incentive or reward for satisfying a standard related to a health risk factor is made in compliance with this section, the federal “Health Insurance Portability and Accountability Act of 1996”, as amended, and the federal regulations implementing such act;

(e) The carrier does not market the wellness and prevention program in a manner that reasonably could be construed as providing an incentive or reward primarily for the purpose of inducing individuals or small groups to purchase the carrier’s health coverage plan; and

(f) The carrier does not use wellness and prevention programs, or incentives or rewards under such programs, to increase rates or premiums for any individuals or small groups covered by the carrier’s plans.

(3.5) An incentive or reward based upon satisfaction of a standard related to a health risk factor may be offered or provided by a carrier only pursuant to a bona fide wellness and prevention program and if the following standards are met:

(a) (I) The incentive for the wellness and prevention program, together with the incentive for other wellness and prevention programs with respect to the health coverage plan or small group plan that requires satisfaction of a standard related to a health risk factor, is reasonably related to the program and does not exceed twenty percent of the cost of employee-only coverage under the health coverage or small group plan or, if an employee’s dependents are allowed to participate in the program, does not exceed twenty percent of the cost of the coverage in which an employee and dependents are enrolled. An employer may also receive an incentive for participation of employees in a wellness and prevention program as long as the employees are allowed an incentive.

(II) For purposes of this paragraph (a), the cost of coverage is determined based on the total amount of employer and employee contributions for the benefit package under which the employee is, or the employee and any dependents are, receiving coverage.

(III) An incentive may be in the form of a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, including, but not limited to, deductibles, copayments, or coinsurance, the absence of a surcharge, or the value of a benefit that would otherwise not be provided under the health coverage or small group plan.

(b) The wellness and prevention program:

(I) Is consistent with evidence-based research and best practices;

(II) Has a reasonable likelihood of improving the health of, or preventing disease in, participating individuals;

(III) Contains culturally and linguistically appropriate programs and materials; and

(IV) Is not overly burdensome, a subterfuge for discriminating based on a health factor, or highly suspect in the method chosen to promote health or prevent disease.



(c) The program gives individuals eligible for the wellness and prevention program the opportunity to qualify for the incentive under the program upon enrollment in the health coverage or small group plan and at least once per year after enrollment.

(d) (I) The full incentive under the wellness and prevention program is made available to all similarly situated individuals. An incentive is not available to all similarly situated individuals for a period unless the wellness and prevention program allows an individual or a licensed health care provider chosen by the individual to request:

(A) A reasonable alternative standard or waiver of the otherwise applicable standard for obtaining the incentive for that period if it is unreasonably difficult for the individual, due to a medical condition, to satisfy the otherwise applicable standard; or

(B) A reasonable alternative standard or waiver of the otherwise applicable standard for obtaining the incentive for that period if it is medically inadvisable for the individual to attempt to satisfy the otherwise applicable standard.

(II) If an individual requests and is granted a waiver or is allowed a reasonable alternative standard and satisfies that standard, the individual shall receive the full incentive under the program that is available to all similarly situated individuals.

(III) If the carrier denies a request for an alternative standard or waiver of a standard that would otherwise be applicable to an individual under a wellness and prevention program, the individual may request an independent external review pursuant to section 10-16-113.5.

(IV) The small employer carrier shall disclose, in all plan materials describing the terms of the wellness and prevention program, the availability of a reasonable alternative standard or the possibility of a waiver of the otherwise applicable standard as required by this paragraph (d). If health coverage or small group plan materials mention the availability of a wellness and prevention program but do not describe the terms of the program, the small employer carrier is not required to make the disclosure of an alternative or waiver pursuant to this subparagraph (IV).

(e) The incentives are provided to an individual based on a program or activity that is scientifically proven to improve health, and the carrier does not provide incentives based on an individual's actual health status.

(3.7) Prior to offering or providing an incentive or reward based upon satisfaction of a standard related to a health risk factor in accordance with subsection (3.5) of this section, a carrier shall submit its proposal for the incentive or reward to a nationally recognized nonprofit entity that accredits wellness programs for review and determination as to whether the proposed program and incentive or reward satisfy the requirements of subsection (3.5) of this section. A carrier shall not offer the proposed program or the incentives or rewards unless the accrediting entity determines that the program and incentives or rewards satisfy those requirements and accredits the carrier's wellness and prevention program.

(4) Nothing in this section shall prohibit a carrier from offering incentives or rewards to covered persons for adherence to programs of health promotion and disease prevention if otherwise allowed by state or federal law.

(5) (a) The division of insurance shall determine which carriers are offering wellness and prevention programs in Colorado and collect the following information from those carriers:

(I) The types of wellness and prevention programs offered;

(II) The types and nature of incentives or rewards the carrier provides for participation;

(III) The total number of small groups in the small group market participating in programs offered by the carrier, specifying the number of each of the following small groups participating in such programs:

(A) Business groups of one;

(B) Small groups with at least two employees and fewer than eleven employees;

(C) Small groups with at least eleven employees and fewer than twenty-six employees;

(D) Small groups with at least twenty-six employees and fewer than fifty-one employees;

(IV) The number of individuals insured through an individual health coverage plan that are participating in programs offered by the carrier;

(V) Any information, including socioeconomic information, as required by the commissioner pursuant to section 10-16-107 to ensure that rates filed in conjunction with the programs are not excessive, inadequate, or unfairly discriminatory;

(VI) The dollar amount of discounts provided to the total number of small groups, as identified pursuant to subparagraph (III) of this paragraph (a); and

(VII) The dollar amount of discounts provided to the total number of individuals, as identified pursuant to subparagraph (IV) of this paragraph (a).

(b) The division shall determine the percentage of carriers issuing individual health coverage plans or small group plans in the state that offer wellness and prevention programs and shall provide that information and the information collected pursuant to paragraph (a) of this subsection (5) to the health and human services committees of the senate and house of representatives, the business, labor, and technology committee of the senate, and the business affairs and labor committee of the house of representatives, or their successor committees, by January 1, 2012, and by each January 1 thereafter until January 1, 2015. The division shall also make the information available to the public by that date.

(6) A small employer that makes available to its employees, through its small group plan, wellness and prevention programs shall not make participation or disclosure of participation in a wellness and prevention program a condition of employment with the small employer.

(6.5) Nothing in this section modifies rate regulation of health coverage plans pursuant to this article, including the applicability of modified community rating to such plans.

(6.7) The commissioner shall monitor and enforce the requirements of this section and, in connection with such monitoring and enforcement, may take any market conduct action authorized by part 2 of article 1 of this title that the commissioner deems necessary to enforce the requirements of this section. As used in this subsection (6.7), "monitor and enforce" includes at least the following:

(a) The review of carrier and producer marketing practices related to wellness and prevention programs; and

(b) An assessment of the types of individual health coverage plans and small group plans containing wellness and prevention programs that have been sold, indicating the percentage of such plans that are high deductible, high cost-sharing plans.

(7) As used in this section:

(a) "Carrier" shall have the same meaning as set forth in section 10-16-102 and shall include CoverColorado, established in section 10-8-504, and any carrier offering a health benefit plan to participants in CoverColorado.

(a.5) "Health risk factor" includes, without limitation, health behaviors such as smoking, diet, alcohol consumption, exercise, and exposure to UV radiation, that are known to be associated with increased mortality and morbidity for a number of conditions.

(b) "Wellness and prevention program" means a program designed to promote health or prevent disease and may include, without limitation, the following:

(I) Health screenings;

(II) Mental health and substance abuse screenings and prevention;

(III) Internet, telephonic, live coaching, or consultation-based wellness programs;

(IV) Education and training about dietary habits;

(V) Online and in-person seminars or podcasts on health and wellness topics, wellness handouts, a wellness library, videos, or newsletters, and a wellness intranet site;

(VI) Wellness programs geared specifically for children, teens, or special populations;

(VII) Corporate health fairs that may combine health screenings with educational opportunities, including access to information on leading a healthy lifestyle and to nutritional counseling;

(VIII) Stress management programs;

(IX) Employee assistance programs for employees and their families;

(X) Disease management;

(XI) Diabetes care programs;

(XII) Tobacco cessation programs;

(XIII) Prescription drug or carrier-approved nonprescription dietary supplement use that aids in overall health and wellness or prevents disease;



- (XIV) Patient-centered medical home programs;
- (XV) Nurse-on-call programs; or
- (XVI) On-site or external health club or fitness center memberships or facilities.
- (8) This section is repealed, effective July 1, 2015.

**Source:** L. 2009: Entire section added, (HB 09-1012), ch. 188, p. 819, § 1, effective July 1. L. 2010: (1), (2)(a), (2)(b), (3)(a), (3)(c), (3)(d), and (5) amended and (3)(f), (3.5), (3.7), (6.5), (6.7), (7)(a.5), and (8) added, (HB 10-1160), ch. 283, pp. 1321, 1326, 1327, §§ 1, 2, 3, effective July 1.

**10-16-137. Policy forms - explanation of benefits - standardization of forms - rules.**

(1) The commissioner shall convene a group of stakeholders, including carriers, providers, and consumers, to develop a standardized format for the following regarding health benefit plans, limited benefit health insurance, and dental plans:

(a) Section names and the placement of those sections in the policy forms issued by all carriers; and

(b) The required information for carriers to provide on an explanation of benefits form sent to covered persons or providers making a claim for benefits under a health benefit plan, limited benefit health insurance, or dental plan.

(2) The commissioner shall adopt rules after considering the input from carriers, providers, consumers, and other stakeholders in developing the standardized format for policy forms and explanation of benefits forms. The rules shall apply to health benefit plans, limited benefit health insurance, and dental plans issued or delivered on or after January 1, 2012.

**Source:** L. 2010: Entire section added, (HB 10-1004), ch. 141, p. 477, § 1, effective August 11.

**10-16-138. Pathology services - direct billing required.** (1) A clinical laboratory or physician that is located in this state or in another state, and that provides anatomic pathology services for patients in this state, shall present or cause to be presented a claim, bill, or demand for payment for these services only to:

(a) The patient;

(b) The responsible insurance carrier or other third-party payer;

(c) The hospital, public health clinic, or nonprofit health clinic ordering such services;

(d) The referring laboratory, excluding a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service for which such claim, bill, or demand is presented; or

(e) A governmental agency or its specified public or private agent, agency, or organization on behalf of the recipient of the services.

(2) Except for a physician at a referring laboratory that has been billed pursuant to subsection (6) of this section, no licensed practitioner in the state may, directly or indirectly, charge, bill, or otherwise solicit payment for anatomic pathology services unless the services were rendered personally by the licensed practitioner or under the licensed practitioner's direct supervision in accordance with section 353 of the "Public Health Service Act", 42 U.S.C. sec. 263a.

(3) A patient, insurer, third-party payer, hospital, public health clinic, or nonprofit health clinic is not required to reimburse a licensed practitioner for charges or claims submitted in violation of this section.

(4) Nothing in this section:

(a) Mandates the assignment of benefits for anatomic pathology services; or

(b) Prohibits a group practice, as defined in 42 U.S.C. sec. 1395nn (h) (4) (A) (i) to (iv), from billing for anatomic pathology services when a physician in the group practice performs or supervises anatomic pathology services in a laboratory that is owned and operated by at least one member of the group practice.

(5) For purposes of this section, "anatomic pathology services" means:

(a) Histopathology or surgical pathology, meaning the gross and microscopic examination performed by a physician or under the supervision of a physician, including histologic processing;

(b) Cytopathology, meaning the microscopic examination of cells from the following:

(I) Fluids;

(II) Aspirates;

(III) Washings;

(IV) Brushings; or

(V) Smears, including the pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician, or under the supervision of a physician, and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by a pathologist;

(d) Subcellular pathology or molecular pathology, meaning the assessment of a patient specimen for the detection, localization, measurement, or analysis of one or more protein or nucleic acid targets; and

(e) Blood-banking services performed by pathologists.

(6) This section does not prohibit billing of a referring laboratory for anatomic pathology services in instances where a sample or samples must be sent to another physician or laboratory for consultation or histologic processing. The term "referring laboratory" does not include a laboratory of a physician's office or group practice that does not perform the professional component of the anatomic pathology service involved.

(7) A person who receives a bill for an anatomic pathology service made in knowing and willful violation of this section may maintain an action to recover the actual amount paid for the bill.

**Editor's note:** This section is effective January 1, 2013.

**Source:** L. 2012: Entire section added, (HB 12-1221), ch. 41, p. 142, § 1, effective January 1, 2013.

## PART 2

### SICKNESS AND ACCIDENT INSURANCE

**10-16-201. Form and content of individual sickness and accident insurance policies.** (1) No such policy shall be delivered or issued for delivery in this state unless:

(a) The entire money and other considerations therefor are expressed therein; and

(b) The time at which insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one person, except as provided in sections 10-16-214 and 10-16-215, and except that a policy or contract may be issued upon the application of an adult member of a family, who shall be deemed the policyholder, covering members of any one family, including husband, wife, dependent children or any children under the age of nineteen, and other dependents living with the family; and

(d) Every printed portion of the text matter and of any endorsements or attached papers is printed in uniform type of which the face is not less than ten-point; the "text" shall include all printed matter except the name and address of the insurer, name and title of the policy, captions, subcaptions, and form numbers; but, notwithstanding any provision of this article, the commissioner shall not disapprove any such policy on the ground that every printed portion of its text matter or of any endorsement or attached paper is not printed in uniform type if it is shown that the type used is required to conform to the laws of another state in which the insurer is licensed; and

(e) The exceptions and reductions of indemnity are adequately captioned and clearly set forth in the policy or contract; and

(f) Each such form, including riders and endorsements, is identified by a form number in the lower left-hand corner of the first page thereof.



(2) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in this section and sections 10-16-202 and 10-16-203.

(3) (a) Each policy in which the insurer reserves the right to refuse renewal on an individual basis shall provide, in substance, in a provision thereof or in an endorsement thereon or in a rider attached thereto, that, subject to the right to terminate the policy upon nonpayment of premium when due, the right to refuse renewal shall not be exercised before the renewal date occurring on, or after and nearest, each anniversary or, in the case of lapse and reinstatement at the renewal date, occurring on, or after and nearest, each anniversary of the last reinstatement and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. This paragraph (a) shall not apply to accident only policies.

(b) In addition, each policy shall provide, in substance, in a provision thereof or in an endorsement thereon or in a rider attached thereto, that an insurer shall not exercise its right to refuse to renew the policy on an individual basis after two years from its date of issue or, in the event the policy has been reinstated, two years from the date of its last reinstatement and before the age or other limitation upon renewal stated in the policy solely because of deterioration in the physical or mental condition or the health of any person covered thereunder.

(c) Nothing in this subsection (3) shall be construed to negate the renewability requirements for health benefit plans specified in section 10-16-201.5.

(4) (a) No policy of sickness and accident insurance issued, renewed, or reinstated shall contain any provision which limits or excludes payments under hospital or medical benefits coverage to or on behalf of the insured because the insured or any covered dependent is eligible for or receiving medical assistance benefits under articles 4, 5, and 6 of title 25.5, C.R.S.

(b) The requirements of paragraph (a) of this subsection (4) shall apply to all such policies issued, renewed, or reinstated on or after August 1, 1984.

(5) (a) If a person is deployed by or called to active duty in the United States military and the person's individual sickness and accident insurance policy lapses during the deployment or activation, the insurer who insured the person shall issue, upon application, the same individual coverage to the person. The application shall contain reasonable evidence of the individual sickness and accident insurance that covered the person prior to the deployment or activation. The insurer shall not:

(I) Restrict benefits or increase premiums for the coverage as a result of the lapse in coverage;

(II) Use any health condition originating or newly treated during the lapse in coverage to rate the policy; or

(III) Limit benefits by an exclusionary rider or by applying a preexisting condition limitation provision to the policy.

(b) Nothing in this subsection (5) shall be construed to limit the ability of an insurer to increase premiums for such policies based on general rate increases that are applicable to all policyholders.

(6) An individual policy of sickness and accident insurance, other than a long-term care policy, disability income policy, or supplemental policy covering a specified disease or other limited benefit, issued, renewed, or reinstated on or after January 1, 2007, shall not contain any provision that limits or excludes payments under hospital or medical benefits coverage to or on behalf of the insured because the insured or a covered dependent sustained an injury while intoxicated or under the influence of a controlled substance, as defined in section 18-18-102 (5), C.R.S.

**Source:** L. 92: Entire article R&RE, p. 1658, § 1, effective July 1. L. 2004: (3)(c) added, p. 990, § 10, effective August 4. L. 2005: (5) added, p. 220, § 2, effective April 14. L. 2006: (4)(a) amended, p. 1999, § 37, effective July 1; (6) added, p. 408, § 1, effective January 1, 2007.

**Editor's note:** The provisions of this section are similar to several former provisions of § 10-8-103 as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the limitations concerning medical health insurance under the "Colorado Medical Treatment Decision Act", see § 15-18-111.

#### ANNOTATION

**Annotator's note.** Since § 10-16-201 is similar to § 10-8-103 as it existed prior to the 1992 repeal of part 1 of article 8 of this title, a relevant case construing that provision has been included in the annotations to this section.

**Applicability of equal fee provisions.** The administrator of the state health plan was not

subject to the provisions of this section because § 10-16-103 (1) provides that non-profit corporations are governed by the provisions of article 16 of this title and not other laws of the state relating to insurance. *Parrish v. Rocky Mt. Hosp. and Med. Servs.*, 754 P.2d 1180 (Colo. App. 1988).

**10-16-201.5. Renewability of health benefit plans - modification of health benefit plans.** (1) A carrier providing coverage under a health benefit plan shall not discontinue coverage or refuse to renew such plan except for the following reasons:

- (a) Nonpayment of the required premium;
- (b) Fraud or intentional misrepresentation of material fact on the part of the plan sponsor with respect to group health benefit plan coverage and the individual with respect to individual coverage;
- (c) (Deleted by amendment, L. 97, p. 640, § 8, effective May 1, 1997.)
- (d) (I) The carrier elects to discontinue offering and nonrenew all of its individual, small group, or large group health benefit plans delivered or issued for delivery in this state. In such case the carrier shall provide notice of the decision to discontinue or not to renew coverage to all policyholders and covered persons and to the insurance commissioner in each state in which an affected individual is known to reside at least one hundred eighty days prior to the discontinuance or nonrenewal of the health benefit plan by the carrier. The carrier shall also discontinue and nonrenew all of its individual or small or large group health benefit plans in Colorado. Notice to the insurance commissioner under this paragraph (d) shall be provided at least three working days prior to the notice to the affected individuals.
- (II) If a carrier discontinues coverage completely from a market segment and otherwise remains in the market, the carrier shall continue to provide coverage through the first renewal period not to exceed twelve months after the notice provided pursuant to subparagraph (I) of this paragraph (d) has expired.
- (e) (Deleted by amendment, L. 97, p. 640, § 8, effective May 1, 1997.)
- (f) With respect to individual health benefit plans, the commissioner finds that the continuation of the coverage would not be in the best interest of the policyholders or certificate holders, the plan is obsolete, or would impair the carrier's ability to meet its contractual obligations. Once the commissioner has made such a finding or the carrier provides the insured the option to purchase any other comparable health benefit coverage as determined by the commissioner, the carrier shall provide notice to each covered individual provided coverage of this type of such discontinuation at least ninety days prior to the date of discontinuation and shall provide each affected covered individual the opportunity to purchase any other individual health insurance coverage being offered by the carrier. In exercising this option, a carrier shall act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.
- (g) With respect to group health benefit plans, the policyholder fails to comply with participation or contribution rules;
- (h) With respect to a carrier that offers group health benefit plans in the market through a managed care plan, there is no longer any enrollee in connection with such plan that lives, resides, or works in the service area of the carrier;



(i) With respect to small group health benefit plans, an employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan; or

(j) With respect to coverage of an employer that is made available only through one or more bona fide associations, the membership of an employer ceases.

(2) (a) A carrier that elects to nonrenew and to discontinue offering all of its individual, small group, or large group health benefit plans in this state pursuant to paragraph (d) of subsection (1) of this section shall be prohibited from writing new health benefit plans of the same type (individual, small group, or large group) as was discontinued or nonrenewed in this state for a period of five years after the date of the notice to the insurance commissioner.

(b) Repealed.

(3) For the purposes of this section, the term "health benefit plan" in section 10-16-102 (21) does not include nonrenewable individual health benefit plans with a duration of six months or less.

(4) An individual health benefit plan must clearly disclose in its contracts and marketing materials the conditions of renewability which conform with the requirements of this section.

(5) A large group health benefit plan carrier may modify a large group health benefit plan at renewal pursuant to section 10-16-214 (3) (a) (IV) if all those large groups covered by the same plan are uniformly modified.

(6) A group health benefit plan carrier may discontinue offering a particular type of group health coverage only if:

(a) The group health carrier provides notice of such discontinuation at least ninety days prior to the date of the discontinuation of such coverage to each policyholder provided this type of coverage and each certificate holder, participant, and beneficiary covered by such a policy;

(b) The group health carrier offers to each policyholder provided coverage of this type the option to purchase any other health insurance coverage currently being offered by the carrier to a group in such market;

(c) In exercising the option to discontinue coverage of this type and in offering the option of coverage under paragraph (b) of this subsection (6), the carrier acts uniformly without regard to the claims experience of those policyholders or any health status-related factor relating to any certificate holders, participants, or beneficiaries covered or new participants or beneficiaries that may become eligible for such coverage;

(d) With respect to the discontinuance of a particular small group plan, the carrier shall notify the commissioner before providing notification to policyholders and insureds as specified in paragraph (a) of this subsection (6). In addition to such notice, the carrier shall provide to the commissioner the following certifications:

(I) That the premiums offered for other health insurance coverage by the carrier pursuant to paragraph (b) of this subsection (6) are not excessive, inadequate, or unfairly discriminatory relative to the plan that was discontinued; and

(II) That the benefit levels offered in other health insurance coverage by the carrier are in compliance with the requirements provided by law for small group health insurance.

(7) (a) The provisions of this section that apply to group health benefit plans shall apply to group health benefit plans sold, issued, renewed, or extended on or after July 1, 1997.

(b) The provisions of this section that apply to individual health benefit plans shall apply to individual health benefit plans sold, issued, renewed, in effect, or operated on or after July 1, 1997.

(8) (a) With respect to benefits provided under a small group health benefit plan or individual health benefit plan renewed on or after January 1, 1999, a carrier may make reasonable modifications if:

(I) The modification is effective only upon renewal of such health benefit plan;

(II) The health benefit plan is uniformly modified for all groups and individuals covered by such health benefit plan;

(III) To the extent a health benefit plan already provides the benefits and coverages established in section 10-16-105 (7.2) and rules and regulations promulgated thereunder, the proposed modifications to benefits and coverages do not fall below such requirements;

(IV) The proposed modification is provided to policyholders and the commissioner at least ninety days prior to the effective date of the modification; and

(V) The carrier provides to each affected policyholder the opportunity to purchase any other health benefit plan offered by the carrier in such market.

(b) The commissioner may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this subsection (8).

**Source:** L. 96: Entire section added, p. 458, § 1, effective July 1. L. 97: Entire section amended, p. 640, § 8, effective May 1. L. 98: (8) added, p. 691, § 1, effective May 18. L. 99: IP(1), (1)(d), and (2) amended, p. 199, § 5, effective January 1, 2000. L. 2001: IP(6), (6)(a), and (6)(b) amended and (6)(d) added, p. 812, § 4, effective January 1, 2002. L. 2002: (1)(d) amended, p. 1295, § 9, effective June 7. L. 2004: (2) amended, p. 1319, § 1, effective May 28; (1)(f) amended, p. 990, § 11, effective August 4.

**Editor's note:** Subsection (2)(b)(IV) provided for the repeal of subsection (2)(b), effective July 1, 2006. (See L. 2004, p. 1319.)

**Cross references:** For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 154, Session Laws of Colorado 1997.

#### **10-16-202. Required provisions in individual sickness and accident policies.**

(1) Except as provided in section 10-16-204, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this section in the words in which the same appear in this section; except that the insurer, at its option, may substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) A provision as follows: "Entire contract—changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(3) Provisions as follows: "Time limit on certain defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period."

"(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of section 10-16-203 in the event of misstatement with respect to age or occupation or other insurance.)"

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty, or in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain, in lieu of the foregoing, the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable":

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.")

(b) Except for individual disability income insurance policies, no claim for loss incurred or disability, as defined in the policy, commencing after one year from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical



condition not excluded from coverage by name or a specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(An individual health benefit plan shall not define a preexisting condition more restrictively than an injury, sickness, or pregnancy for which a person incurred charges, received medical treatment, consulted a health care professional, or took prescription drugs within the twelve months immediately preceding the effective date of coverage.)

(c) If this is an individual disability income insurance policy then no claim for loss incurred or disability, as defined in this individual disability income insurance policy, commencing after two years from the date of issue of the policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or a specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(4) (a) A provision as follows: "Grace period: A grace period of ..... (insert a number not less than '7' for weekly premium policies, '10' monthly premium policies, and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(b) A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the provision referred to in paragraph (a) of this subsection (4), "Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

(5) (a) A provision as follows: "Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy. If the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."

(b) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.

(6) (a) Provisions as follows: "Notice of claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(b) In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the provision set forth in paragraph (a) of subsection (6) of this section:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on

account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

(7) A provision as follows: "Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."

(8) A provision as follows: "Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(9) A provision as follows: "Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

(10) (a) A provision as follows: "Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(b) The following provisions, or either of them, may be included with the provision set forth in paragraph (a) of this subsection (10) at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give valid release, the insurer may pay such indemnity, up to an amount not exceeding \$ ..... (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(11) A provision as follows: "Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(12) A provision as follows: "Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action



shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.”

(13) (a) A provision as follows: “Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.”

(b) The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer’s option.

**Source:** L. 92: Entire article R&RE, p. 1660, § 1, effective July 1. L. 94: (3) amended, p. 1918, § 11, effective July 1. L. 95: (3)(b) amended and (3)(c) added, p. 726, § 2, effective May 23.

**Editor’s note:** This section is similar to former § 10-8-104 as it existed prior to 1992.

### ANNOTATION

**Annotator’s note.** Since § 10-16-202 is similar to § 10-8-104 as it existed prior to the 1992 repeal of part 1 of article 8 of this title, relevant cases construing that provision have been included in the annotations to this section.

**An insured adopts the application when he executes** it even though he may not have read the application. *Commercial Ins. Co. v. Smith*, 417 F.2d 1330 (10th Cir. 1969).

**Even so, this does not shift the burden of proving fraud** which was the critical issue. The company has the affirmative burden in avoiding a policy. The insured contends he did not know the seriousness of the eye disease. The issue of scienter was presented and the jury decided in favor of the insured. Therefore, the insurer failed to prove fraud clearly, cogently, convincingly, and beyond a reasonable doubt. *Commercial Ins. Co. v. Smith*, 417 F.2d 1330 (10th Cir. 1969).

**For “fraudulent misstatements” must have elements of common-law fraud.** The insurance company’s contention is that the insured knew, at the time he answered the application, of the serious nature of his eye condition and therefore the company is entitled to rescind the insurance contract. The contention concerns a construction of the meaning of the statutory phrase “except fraudulent misstatements”. Under this statute, the trial court correctly submitted the case to the jury on instructions that the appellant must establish the legal elements of common-law fraud which includes scienter or intent to defraud,

instead of instructions setting out the equitable defense of fraud, as to which scienter or intent to defraud is not a necessary element. *Commercial Ins. Co. v. Smith*, 417 F.2d 1330 (10th Cir. 1969).

**Initial effective date of policy governs rider if parties intend this.** The second part of the policy which increased the benefits was added as a rider within two years of the claim. The language consolidates the rider and the policy initially issued by the words “Attached to and forming part of policy”. The parties intended one policy, with the initial effective date to govern the two year contestability clause. This conclusion is more clear when the brevity of the rider application is noted. *Commercial Ins. Co. v. Smith*, 417 F.2d 1330 (10th Cir. 1969).

**The reinstatement of sickness and accident policies is governed by this section**, and the provisions of this section are dispositive of arguments related to the limitations of which insurers are required to notify insureds. *Jarnigan v. Banker’s Life and Casualty Co.*, 824 P.2d 11 (Colo. App. 1991).

**The language in subsection (3)(b) regarding “preexisting conditions” supercedes** that of § 10-16-118 (1)(a)(II) with respect to individual health coverage plans. Thus, the definition of “preexisting conditions” in such plans does not include specified conditions the coverage for which is explicitly limited, denied, or excluded. *Usick v. Am. Family Mut. Ins. Co.*, 131 P.3d 1195 (Colo. App. 2006).

**10-16-203. Optional provisions in individual sickness and accident insurance policies.** (1) Except as provided in section 10-16-204, no individual sickness and accident insurance policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appro-

appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) A provision as follows: "Change of occupation: If the insured is injured or contracts sickness after having changed the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(3) A provision as follows: "Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(4) A provision as follows: "Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured are in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of \$ ..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate."; or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, the insured's beneficiary, or the estate of the insured, as the case may be, and the insurer will return all premiums paid for all other such policies."

(5) (a) A provision as follows: "Insurance with other insurers: If there is other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(b) If the foregoing policy provision is included in a policy which also contains the policy provisions in subsection (6) of this section, there shall be added to the caption of the foregoing provision the phrase "..... Expense incurred benefits". The insurer may include in this provision, at its option, a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition, such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to



any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as "other valid coverage".

(6) (a) A provision as follows: "Insurance with other insurers: If there is other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(b) If the policy provision set forth in paragraph (a) of this subsection (6) is included in a policy which also contains the policy provision in subsection (5) of this section, there shall be added to the caption of the provision set forth in paragraph (a) of this subsection (6) the phrase "..... Other benefits". The insurer may include in this provision, at its option, a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition, such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefits provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision, no third-party liability coverage shall be included as "other valid coverage".

(7) (a) A provision as follows: "Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars, or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(b) The policy provision set forth in paragraph (a) of this subsection (7) may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may include in this provision, at its option, a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition, such

term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(8) A provision as follows: "Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(9) A provision as follows: "Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

**Source: L. 92:** Entire article R&RE, p. 1665, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-105 as it existed prior to 1992.

**10-16-204. Inapplicable or inconsistent provisions in individual policies of sickness and accident insurance.** If any provision of part 1 of this article or this part 2 is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

**Source: L. 92:** Entire article R&RE, p. 1669, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-106 as it existed prior to 1992.

**10-16-205. Order of certain policy provisions in individual policies of sickness and accident insurance.** The provisions which are the subject of sections 10-16-202 and 10-16-203, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections, or, at the option of the insurer, any such provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, but the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

**Source: L. 92:** Entire article R&RE, p. 1669, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-107 as it existed prior to 1992.

**10-16-206. Third party ownership of individual sickness and accident insurance policies.** The word "insured", as used in part 1 of this article and this part 2, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

**Source: L. 92:** Entire article R&RE, p. 1670, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-108 as it existed prior to 1992.

**10-16-207. Requirements of other jurisdictions.** (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of part 1 of this article and this part 2 and which is prescribed or required by the law of the state under which the insurer is organized.



(2) Any policy of a domestic insurer, when issued for delivery in any other state or country, may contain any provision permitted or required by the laws of such other state or country.

**Source: L. 92:** Entire article R&RE, p. 1670, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-109 as it existed prior to 1992.

**10-16-208. Conforming to statute.** (1) No policy provision which is not subject to section 10-16-202 or 10-16-203 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to part 1 of this article and this part 2.

(2) A policy delivered or issued for delivery to any person in this state in violation of part 1 of this article or this part 2 shall be held valid but shall be construed as provided in part 1 of this article and this part 2. When any provision in a policy subject to part 1 of this article and this part 2 is in conflict with any provision of part 1 of this article or this part 2, the rights, duties, and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of part 1 of this article and this part 2.

**Source: L. 92:** Entire article R&RE, p. 1670, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-110 as it existed prior to 1992.

**10-16-209. Application for policy.** (1) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state is reinstated or renewed, and the insured or the beneficiary or assignee of such policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer, within fifteen days after the receipt of such request at its home office or any branch office of the insurer, shall deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(2) No alteration of any written application for any such policy shall be made by any person other than the applicant without the applicant's written consent; except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(3) The falsity of any statement in the application for any policy covered by part 1 of this article or this part 2 may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

**Source: L. 92:** Entire article R&RE, p. 1670, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-111 as it existed prior to 1992.

#### ANNOTATION

**Annotator's note.** Since § 10-16-209 is similar § 10-8-111 as it existed prior to the 1992 repeal of part 1 of article 8 of this title, a relevant case construing that provision has been included in the annotations to this section.

**The effect of this section is:** (1) To bar the

insurer from defending against liability to the insured under a policy, on the basis of statements in an application not attached to the policy; and (2) even when the application is attached, to bar the insurer from denying recovery unless the false statement involved materially

affected the acceptance of the risk or hazard assumed by the insurer. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**The provisions of this section and § 10-8-116 do not require attachment of a copy** of the individual member's application for coverage under group health insurance policy to that policy, or to the certificate of coverage issued thereunder, and the trial court's conclusion to this effect is not in error. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**A group member, as a member of the farm bureau, is not the applicant** for a "policy", but only the applicant for a certificate of coverage under the policy. Colorado farm bureau is the applicant for the group "policy". Further, no "policy" is ever issued to the group member, to which his application must have necessarily been attached; but only a certificate of coverage. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**If representations made in answer to specific questions material to the risk are untrue**, the policy will thereby be rendered void, and it is immaterial whether such answers be considered warranties or representations, or whether they were made with the intention to deceive the insurer or without such intention. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**Finder of fact may determine falsity a materiality of answers.** The trial judge, as finder of fact, could conclude: (1) That the answer given by a group member regarding his wife's prior medical history, although true to the extent given, was nevertheless false, by omission of mention of several previous, similar illnesses of which the group member was completely aware; and (2) that it therefore constituted a material, fraudulent misrepresentation. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**10-16-210. Notice - waiver.** The acknowledgment by any insurer of the receipt of notice given under any policy covered by part 1 of this article or this part 2, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim under such policy shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

**Source: L. 92:** Entire article R&RE, p. 1671, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-112 as it existed prior to 1992.

**10-16-211. Age limit.** If any such policy contains a provision establishing, as an age limit or otherwise, a date after which coverage provided by the policy will not be effective, and if such date falls within a period for which a premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which the premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such premium, the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

**Source: L. 92:** Entire article R&RE, p. 1671, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-113 as it existed prior to 1992.

**10-16-212. Exemption from attachment and execution.** So much of any benefits under all policies of sickness and accident insurance as does not exceed two hundred dollars for each month during any period of disability covered by such policy shall not be liable to attachment, trustee process, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or by operation of law, either before or after payment of such benefits, to pay any debt or liabilities of the person insured under such policy. This exemption shall not apply where an action is brought to recover for necessities contracted



for during such period and the writ or complaint contains a statement to that effect. When a policy provides for a lump sum payment because of a dismemberment or other loss insured, such payment shall be exempt from execution by the insured's creditors.

**Source: L. 92:** Entire article R&RE, p. 1672, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-114 as it existed prior to 1992.

**10-16-213. Industrial sickness and accident insurance.** (1) The term "industrial sickness and accident insurance", as used in this part 2, means sickness and accident insurance under individual policies for which the premium is payable weekly and includes any such policy which covers sickness only or accident only.

(2) Any insurer authorized to write sickness and accident insurance in this state has the power to issue industrial sickness and accident policies.

(3) No policy of industrial sickness and accident insurance may be delivered or issued for delivery in this state unless it has printed on such policy the words "industrial policy".

(4) (a) Each such policy shall be subject to the provisions of this part 2; except that no such policy shall be required to contain any of the policy provisions set forth in section 10-16-202 or 10-16-203 and except that no such policy shall contain any provision relative to notice of proof of loss, or the time for paying benefits, or the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the insured than would be permitted by said policy provisions. Such policy may contain a provision that, upon proper written request, a named beneficiary shall be designated in or by endorsement on the policy to receive the proceeds thereof on the death of the insured, and there shall be reserved to the insured the power to change the beneficiary at any time by written notice to the insurer at its home office, accompanied by the policy for endorsement of the change on said policy by the insurer. The insurer shall have the right to refuse to designate a beneficiary if evidence satisfactory to the company of such beneficiary's insurable interest in the life of the insured is not furnished on request.

(b) Any such policy may provide in substance that any payment under said policy may be made to the insured or the insured's estate or to any relative by blood or connection by marriage of the insured, or, to the extent of such portion of any payment under the policy as reasonably appears to the insurer to be due to such person or to any other person equitably entitled thereto by reason of having incurred expense occasioned by the maintenance or illness or burial of the insured. If the policy is in force at the death of the insured, the proceeds from said policy shall be payable to the named beneficiary if living, but, upon the expiration of fifteen days after the death of the insured, unless proof of claim in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by such beneficiary, the insurer may pay to any other person permitted by the policy.

**Source: L. 92:** Entire article R&RE, p. 1672, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-115 as it existed prior to 1992.

**10-16-214. Group sickness and accident insurance.** (1) Group sickness and accident insurance is declared to be that form of sickness and accident insurance covering groups of persons, with or without their dependents, and issued upon the following bases:

(a) Under a policy issued to an employer, who shall be deemed the policyholder, insuring at least ten employees of such employer for the benefit of persons other than the employer. The term "employees", as used in part 1 of this article and this part 2, includes the officers, managers, and employees of the employer, the bona fide volunteers if the employer is an emergency service provider, the partners if the employer is a partnership, the officers, managers, and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership,

contract, or otherwise. The term "employer", as used in part 1 of this article and this part 2, may include an emergency service provider, any municipal or governmental corporation, unit, agency, or department thereof, and the proper officers, as such, of an emergency service provider or an unincorporated municipality or department thereof, as well as private individuals, partnerships, and corporations.

(b) Under a policy issued to an association, including a labor union, which has a constitution and bylaws and which is organized and maintained in good faith for purposes other than that of obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such;

(c) On and after July 1, 1994, under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class of individuals that could be insured under such group life insurance policy; except that, on and after July 1, 1994, such a policy shall cover at least two or more individuals at date of issue, and on and after January 1, 1996, such a policy shall cover a business group of one at the date of issue;

(d) Under a policy issued to any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group sickness and accident policy or contract.

(e) Repealed.

(2) (a) The provisions of this section shall not apply to transactions in this state involving group sickness and accident insurance policies for policies which were lawfully issued and delivered in another jurisdiction in which the company was authorized to do insurance business and any such policy was issued to a valid multistate association located in the state of issue, if the policy is not designed, administered, or marketed as a plan for employers to provide coverage to one or more employees and is not a bona fide association plan.

(b) For purposes of this subsection (2), "valid multistate association" means an association which has:

(I) Been in active existence for at least five years;

(II) Been organized and maintained in good faith for purposes other than that of obtaining insurance;

(III) A minimum of five hundred members;

(IV) A constitution, charter, or bylaws which provide for regular meetings, at least annually, to further the purposes of the members;

(V) Collected dues or solicited contributions for members; and

(VI) Provided the members with voting privileges and representation on the governing board and committees.

(3) (a) Except as provided for in subsection (2) of this section, all policies of group sickness and accident insurance providing coverage to persons residing in the state shall contain in substance the following provisions or provisions which, in the opinion of the commissioner, are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder:

(I) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the policy shall continue in force, unless the policyholder has given the insurer written notice of discontinuance of the coverage in advance of the date of discontinuance in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the coverage was in force during such grace period.

(II) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue and that no statement made for the purpose of effecting insurance coverage under the policy with respect to a person shall be used to avoid the insurance with respect to which such statement was made or to reduce benefits under such policy after such insurance has been in force for a period of two years during such person's lifetime unless such statement is contained in a written instrument signed by the person making such statement and a copy



of that instrument is or has been furnished to the person making the statement or to the beneficiary of any such person;

(III) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and that all statements made by the policyholder or by the persons covered shall be deemed representations and not warranties;

(IV) A provision that no agent has authority to change the policy or waive any of its provisions and that no change in the policy shall be valid unless approved by an officer of the insurer and evidenced by an endorsement on the policy or by rider or amendment to the policy signed by the insurer; but any such amendment which reduces or eliminates coverage shall have been either requested in writing or signed by the policyholder;

(V) (A) A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. With respect to a group health coverage plan, such provision shall comply with the provisions of section 10-16-118; except that, with respect to a group disability income insurance policy, such provision shall comply with the provisions of sub-subparagraph (C) of this subparagraph (V).

(B) In no event shall such exclusion or limitation apply to loss incurred or disability commencing after the earlier of the end of a continuous period of six months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition and the end of the six-month period commencing on the effective date of the person's coverage, except as provided in sub-subparagraphs (A) and (C) of this subparagraph (V).

(C) A group disability income insurance policy shall not define a preexisting condition more restrictively than an injury, sickness, or pregnancy for which a person incurred charges, received medical treatment, consulted a health professional, or took prescription drugs within the twelve-month period immediately preceding the effective date of coverage. In no event shall a group disability income insurance policy deny, exclude, or limit benefits for a covered individual because of a preexisting condition for a disability commencing more than twelve months following the effective date of such individual's coverage under the group disability income insurance policy.

(VI) A provision specifying the ages, if any, to which the insurance provided is limited, the ages, if any, for which additional restrictions are placed on benefits, and the additional restrictions placed on the benefits at such ages. If the premiums or benefits vary by age, there shall also be a provision specifying an equitable adjustment of premiums or benefits, or both, to be made in the event the age of a covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used. In no event, however, shall coverage be required for any person during any period when, according to the person's correct age, coverage would otherwise not be provided for the person under the policy.

(VII) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate, which may be in summary form, setting forth the essential features of the insurance coverage, including any applicable conversion or continuation privilege, and to whom the benefits are payable. If family members or dependents are included in the coverage, only one certificate need be issued for each family unit.

(VIII) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it is shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(IX) A provision that the insurer will furnish, to the person making claim or to the policyholder for delivery to said person, such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy, the person making the claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon

submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(X) A provision that, in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that, in the case of a claim for any other loss, written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible to furnish such proof within such time if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

(XI) A provision that all benefits payable under the policy, other than benefits for loss of time, will be payable pursuant to section 10-16-106.5 and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of such proof;

(XII) A provision that indemnity for loss of life shall be payable to the beneficiary designated by the insured (but, when the policy contains conditions pertaining to family status or provisions pertaining to coverage of family members, the beneficiary may be the family member specified by the policy terms) or, if there is no such designated or specified beneficiary, to such other person as is specified in the policy and that all other indemnities of the policy are payable to the insured; except that the group policy may provide that all or any portion of any benefits on account of hospital, medical, and surgical or other services may be paid, at the insurer's option, directly to the hospital or person rendering such services. The group policy may provide that, if any benefit is payable to the estate of a person or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay such benefit, up to an amount not exceeding two thousand dollars, to any relative by blood or connection by marriage of such person who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to the provisions of this subparagraph (XII) shall discharge the insurer's obligation with respect to the extent of such payment.

(XIII) A provision that the insurer shall have the right and opportunity to examine the person of the individual for whom claim is made when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law;

(XIV) A provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of the time requirements for payment pursuant to section 10-16-106.5 and after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within three years from the expiration of the time within which proof of loss is required by the policy.

(b) (I) The provisions of subparagraph (V) of paragraph (a) of this subsection (3) shall not apply to dental insurance.

(II) The provisions of subparagraphs (V) and (XII) of paragraph (a) of this subsection (3) shall not apply to policies issued to a creditor to insure debtors of such creditor.

(III) The standard provisions required for individual health insurance policies shall not apply to group health insurance policies.

(IV) If any provision of this section is, in whole or in part, inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part thereof and shall modify any inconsistent provision or part thereof in such manner as to make the provision contained in the policy consistent with the coverage provided by the policy.

(4) A carrier offering a group health benefit plan shall not establish rules for eligibility for any individual to enroll under the plan based on any health status-related factors in relation to the individual or a dependent of the individual.



(5) A carrier writing health benefit coverage for an employee leasing company shall ensure that any health benefit plan marketed or sold to such company that covers employees in Colorado complies with all the provisions of Colorado law that apply to large employer health plans, including consumer and provider protections, mandated benefits, nondiscrimination and fair marketing rules, preexisting limitations, and other required health plan policy provisions. All health coverage plans sponsored by or marketed through an employee leasing company shall be fully insured plans.

(6) A group sickness and accident insurance policy, other than a long-term care policy, disability income policy, or supplemental policy covering a specified disease or other limited benefit, issued, renewed, or reinstated on or after January 1, 2007, shall not contain any provision that limits or excludes payments under hospital or medical benefits coverage to or on behalf of the insured because the insured or any covered dependent sustained an injury while intoxicated or under the influence of a controlled substance, as defined in section 18-18-102 (5), C.R.S.

**Source:** **L. 92:** Entire article R&RE, p. 1673, § 1, effective July 1; (1)(e) repealed, p. 1592, § 114, effective July 1. **L. 94:** (1)(c) and (3)(a)(V) amended, p. 1919, § 12, effective July 1. **L. 95:** (3)(a)(V)(B) amended and (3)(a)(V)(C) added, p. 726, § 3, effective May 23. **L. 97:** (2)(a) and (3)(a)(V)(A) amended and (4) added, p. 643, § 9, effective July 1. **L. 99:** (5) added, p. 149, § 3, effective March 25. **L. 2004:** (3)(a)(XI), (3)(a)(XIV), and (5) amended, p. 991, § 12, effective August 4. **L. 2006:** (6) added, p. 408, § 2, effective January 1, 2007. **L. 2008:** (1)(a) amended, p. 579, § 2, effective August 5. **L. 2010:** (1)(c) amended, (HB 10-1203), ch. 47, p. 177, § 2, effective March 29.

**Editor's note:** The provisions of this section are similar to several former provisions of § 10-8-116 as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the legislative declaration contained in the 1997 act amending subsections (2)(a) and (3)(a)(V)(A) and enacting subsection (4), see section 1 of chapter 154, Session Laws of Colorado 1997.

## ANNOTATION

**Law reviews.** For article, "The Terminated Employee's Right to Continue Group Health Insurance", see 17 Colo. Law. 53 (1988).

**Annotator's note.** Since § 10-16-214 is similar to § 10-8-116 as it existed prior to the 1992 repeal of part 1 of article 8 of this title, relevant cases construing that provision have been included in the annotations to this section.

**This section requires the inclusion of the mandatory provisions as part of the terms of the contract of insurance, and makes them enforceable as such.** Statements made by the policyholder can be used against it only if its application is attached to the policy. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**Individual employees' applications need not be attached to policy.** The general assembly did not intend, by use of the wording of these statutes, that all applications made by individual employees or members of a group be attached to the original policy issued to the group. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**As a condition precedent to use of their statements as defense to liability.** Subsection

(2) does not require the mandatory inclusion in the policy of a provision that the application of an individual member must be attached to the policy, or to the certificate issued thereunder, as a condition precedent to the use of statements in that application as a defense to liability, although subsection (2)(b) indicates that any such statements are admissible in evidence whenever contained in a written application submitted to the insurer. *Fallis v. Zurich Ins. Co.*, 28 Colo. App. 235, 472 P.2d 174 (1970).

**Preemption of insurance provisions under the federal "Employee Retirement Income Security Act".** ERISA does not preempt persons from state laws which regulate insurance, banking, and securities. The test for whether a state law falls under the "business of insurance" is: (1) Whether the state law has the effect of transferring or spreading a policy holder's risk; (2) whether the state law is an integral part of the policy relationship between the insurer and the insured; and (3) whether the state law is limited to entities within the insurance industry. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

This section meets all three requirements of the test and therefore regulates insurance and is

not preempted by ERISA. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

**10-16-215. Blanket sickness and accident insurance.** (1) Blanket sickness and accident insurance is declared to be that form of sickness and accident insurance covering special groups of not less than ten persons as enumerated in one of the following:

(a) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier;

(b) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment;

(c) Under a policy or contract issued to a college, school, or other institution of learning or to the head or principal thereof, who shall be deemed the policyholder, covering students or teachers;

(d) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group;

(e) Under a policy or contract issued to any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a blanket sickness and accident policy or contract.

(2) An individual application shall not be required from a person covered under a blanket sickness or accident policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(3) All benefits under any blanket sickness and accident policy shall be payable to the person insured or any such person's agent, or to the designated beneficiary of any such person, or to the estate of any such person; except that, if the person insured is a minor, such benefits may be made payable to the parent, guardian, or other person actually supporting such person.

**Source:** L. 92: Entire article R&RE, p. 1679, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-117 as it existed prior to 1992.

**10-16-216. Examinations.** (1) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted health insurer transacting any insurance to which the provisions of part 1 of this article and this part 2 are applicable to ascertain whether each insurer and every rate used by it for every such class of insurance complies with the requirements and standards of this title applicable thereto. Such examination need not be a part of a periodic general examination participated in by representatives of more than one state.

(2) The officers, managers, agents, and employees of any such insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by such insurer in the conduct of the operations to which such examination relates.

(3) The commissioner may conduct such examination on the basis of concern for an insurer's solvency or the complaint of a person claiming to be aggrieved or to ascertain compliance by insurers with the requirements of part 1 of this article and this part 2.

(4) Filed reports on examinations conducted pursuant to this section shall be available for public inspection at the division of insurance.

**Source:** L. 92: Entire article R&RE, p. 1679, § 1, effective July 1; entire section amended, p. 1592, § 115, effective July 1.

**Editor's note:** This section is similar to former § 10-8-118 as it existed prior to 1992.



**10-16-216.5. Hearing procedure and judicial review - violations - penalty.**

(1) Any person aggrieved by any rate charged, underwriting rule, policy form, certificate, contract of insurance, or rider followed or adopted by a health insurer may request the insurer to review the manner in which the rate, underwriting rule, policy form, certificate, contract of insurance, or rider has been applied with respect to insurance afforded to any such person. Such request may be made by an authorized representative of any such person and shall be written. If the request is not granted within thirty days after it is made, the request may be treated as rejected. Any person aggrieved by the action of an insurer in refusing the review requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner finds that probable cause for the complaint does not exist or that the complaint is not made in good faith, the commissioner shall deny the hearing; however, if the commissioner finds that the complaint charges a violation of any provision of this article and that the complainant would be aggrieved if the violation is proven, the commissioner shall proceed as provided in subsection (2) of this section.

(2) If after examination or inspection of an insurer, or upon the basis of other information, or upon sufficient complaint as provided in subsection (1) of this section, the commissioner has good cause to believe that such insurer, or any rate, underwriting rule, policy form, certificate, contract of insurance, or rider made or used by any such insurer does not comply with the applicable requirements and standards, the commissioner shall, unless the commissioner has good cause to believe such noncompliance is willful, give notice in writing to such insurer, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, in which such noncompliance shall be corrected.

(3) (a) If the commissioner has good cause to believe that noncompliance with the applicable requirements and standards as specified in subsection (2) of this section is willful or if, within the period prescribed by the commissioner in the notice required by subsection (2) of this section, the insurer does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, the commissioner may hold a public hearing in connection therewith. Within a reasonable period of time, not less than ten days before the date of such hearing, the commissioner shall mail a written notice of the hearing to such insurer. The notice given under this subsection (3) shall state in what manner and to what extent noncompliance is alleged to exist and the matter to be considered at such hearing. The hearing shall not include subjects not specified in the notice. The hearing shall be conducted in accordance with section 24-4-105, C.R.S., and the commissioner shall have all the powers set forth in said section.

(b) Any insurer aggrieved by an order or decision of the commissioner made without a hearing may, within thirty days after notice of the order or decision, make written application to the commissioner for a hearing thereon. The commissioner shall hold a hearing as provided in the applicable provisions of article 4 of title 24, C.R.S. Within fourteen days after such hearing, the commissioner shall affirm, reverse, or modify the commissioner's previous action, specifying the reasons therefor.

(4) If, after a hearing pursuant to subsection (3) of this section, the commissioner finds:

(a) That any rate violates the provisions of this title applicable to it, the commissioner may issue an order to the insurer which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate by such insurer in contracts of insurance made thereafter shall be prohibited. In such order the commissioner shall require the excess premium plus eight percent interest to be refunded to the policyholder. The amount of the refund, plus interest, shall be computed from the effective date of the rate used on the policyholder contract to the date of the order by the commissioner pursuant to this section. Interest shall be computed as simple interest per annum.

(b) That an insurer is in violation of the provisions of this title applicable to it, other than the provisions dealing with rates, the commissioner may issue an order to such insurer which has been the subject of the hearing, specifying in what respect such violation exists and requiring compliance within a specified time thereafter;

(c) That any policy form, certificate, contract of insurance, or rider contains any provision or style of presentation which is deceptive or misleading or renders its use hazardous to the public or the policyholders or otherwise does not comply with the requirements of law, the commissioner may issue an order to such insurer which has been the subject of the hearing, prohibiting the further use of such form in this state;

(d) That the violation of any of the provisions of this title applicable to it by any insurer which is the subject of a hearing is willful, the commissioner may suspend or revoke, in whole or in part, the certificate of authority of such insurer with respect to the class of insurance which has been the subject matter of the hearing.

(5) In addition to any other remedies or penalties provided by law:

(a) The commissioner may suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply with an order of the commissioner within the time limit contained in any such order. The commissioner shall not suspend or revoke the certificate of authority for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension or revocation of any certificate of authority shall become effective. An order of suspension shall remain in effect for the period fixed by the commissioner unless the commissioner modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded, or reversed. No certificate of authority shall be suspended or revoked except upon a written order of the commissioner, stating findings made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violations.

(b) If a failure to comply with an order of the commissioner within the time limit specified in any such order is willful, the insurer shall be liable to the state in an amount not exceeding five thousand dollars for any such failure. The commissioner shall collect the amount so payable and may bring a civil action in the name of the people of the state of Colorado to enforce such collection. Such penalty may be in addition to the remedy provided in paragraph (a) of this subsection (5). All moneys collected by the commissioner under this paragraph (b) shall be transmitted to the state treasurer who shall credit the same to the general fund of the state.

(6) Any finding, determination, rule, ruling, or order made by the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source: L. 92:** Entire section added, p. 1593, § 116, effective July 1.

**10-16-217. Application of part 1 of this article and part 2.** (1) Nothing in part 1 of this article or this part 2 shall apply to or affect any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage in said policy; or life insurance, endowment, or annuity contracts, or contracts supplemental to said policy which contain only such provisions relating to sickness and accident insurance as provide additional benefits in case of death by accident, and as operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

(2) With the exception of section 10-16-201 (3), the provisions of sections 10-16-201 to 10-16-205 shall not apply to those forms of sickness and accident policies enumerated in sections 10-16-214 and 10-16-215; except that no such policy shall contain any provision relative to notice or proof of loss, or the time for paying benefits, or the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the insured than would be permitted by the policy provisions set forth in section 10-16-202 or 10-16-203.

**Source: L. 92:** Entire article R&RE, p. 1680, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-119 as it existed prior to 1992.



**Cross references:** For provisions pertaining to workers' compensation, see articles 40 to 47 of title 8.

**10-16-218. Judicial review.** Any final action of the commissioner pursuant to part 1 of this article and this part 2 shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source: L. 92:** Entire article R&RE, p. 1680, § 1, effective July 1; entire section amended, p. 1596, § 118, effective July 1.

**Editor's note:** This section is similar to former § 10-8-120 as it existed prior to 1992.

**10-16-219. Benefits for care of mental illness in tax supported institutions.** (1) On and after July 1, 1977, no individual policy or group policy of sickness, health, or accident insurance or small group sickness and accident insurance delivered or issued for delivery to any person in this state which provides coverage for mental illness, mental retardation, or both, shall exclude or be construed to diminish benefits for the payment of the direct costs, related directly to the treatment of such mental illness, mental retardation, or both, provided by a state institution, including community clinics and centers for mental health and mental retardation services, if such charges for treatment of such mental illness, mental retardation, or both, are customarily charged to nonindigent patients by such state institution.

(2) Any policy issued on or after July 1, 1977, on a form approved prior to said date, containing any provisions in conflict with the provisions of this section shall be in effect only if there is attached to such policy at the time of issue a rider or endorsement amending such policy to conform to the provisions of this section.

**Source: L. 92:** Entire article R&RE, p. 1680, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-8-123 as it existed prior to 1992.

#### ANNOTATION

**Applied** in *Schleiger v. State*, 193 Colo. 531, 568 P.2d 441 (1977).

**10-16-220. Minimum standards for sickness and accident plans.** The commissioner may promulgate regulations prescribing minimum standards applicable to the valuation of sickness and accident plans or products, and in conformance with standards as adopted by the national association of insurance commissioners.

**Source: L. 92:** Entire section added, p. 1498, § 28, effective July 1.

**Editor's note:** This section was enacted by section 28 of chapter 203, Session Laws of Colorado 1992, as § 10-8-127 but was renumbered on revision and harmonized with this article since part 1 of article 8 was repealed and the substantive provisions thereof were moved to this article.

#### **10-16-221. Health care task force - creation - duties - repeal. (Repealed)**

**Source: L. 2005:** Entire section added, p. 1026, § 2, effective June 2; (2)(n) added, p. 576, § 1, effective May 26. **L. 2006:** (2.5) added, p. 720, § 1, effective May 1; (2)(m) and (2)(n) amended and (2)(o) added, p. 1172, § 1, effective May 25. **L. 2007:** (2.6) added, p. 1258, § 1, effective May 25. **L. 2009:** (2.7) added, (HB 09-1102), ch. 93, p. 358, § 1, effective April 3; (1)(b) amended, (HB 09-1364), ch. 364, p. 1912, § 1, effective June 1; (2.8) added, (HB 09-1224), ch. 274, p. 1236, § 1, effective August 5. **L. 2010:** (1)(f) amended, (SB 10-213), ch. 375, p. 1761, § 5, effective June 7.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2005, p. 1026.)

### PART 3

#### NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS

**10-16-301. Legislative declaration.** (1) It is the policy of the general assembly, and the intent and purpose of this article, to promote the availability of hospital care, medical-surgical care, and other health services on a voluntary nonprofit prepaid basis, and to thereby promote the health and welfare of the people of the state of Colorado.

(2) It is further the policy of the general assembly to conform the laws of the state of Colorado to section 1012 of the federal "Tax Reform Act of 1986", as amended, to ensure uniform federal and Colorado income taxation treatment of nonprofit hospitals, medical-surgical, and health service corporations. The general assembly recognizes that health care coverage may be offered to the citizens of this state by various entities with distinct organizational and functional forms. The placement of this part 3 in this article should in no way be construed so as to alter the distinct organizational and functional character of nonprofit hospital, medical-surgical, and health service corporations or to alter the legal distinctions between such corporations and other health care coverage entities.

**Source:** L. 92: Entire article R&RE, p. 1681, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-102 as it existed prior to 1992.

**10-16-302. Incorporation and organization - exemptions.** (1) Any nonprofit corporation organized under the laws of the state of Colorado for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby prepaid hospital care, medical-surgical care, and other health services are made available to persons who become subscribers to such plan under a contract with the corporation, or for the purpose of providing long-term care insurance to persons pursuant to a contract with the corporation shall be subject to and governed by the provisions of part 1 of this article and this part 3 and, except as provided in this article and elsewhere in this title, shall not be subject to the laws of this state relating to insurance or insurance companies. The provisions of sections 10-3-109 (2), 10-3-128, and 10-8-530 (1.5); articles 1 and 2 of this title; and parts 4, 5, 7, 8, 11, and 12 of article 3 of this title, to the extent applicable, shall govern corporations organized pursuant to the provisions of this part 3.

(2) The provisions of this part 3 shall not apply to any employer's health plan or services established and maintained solely for its employees and their immediate families, nor to any labor organization's health plan or services established and maintained solely for its members and their immediate families, which plans or services are self-insured, nor to any such health plan or services established, maintained, and insured jointly by any employer and any labor organization.

**Source:** L. 92: Entire article R&RE, p. 1681, § 1, effective July 1; (1) amended, p. 1597, § 118, effective July 1. L. 94: (1) amended, p. 596, § 2, effective April 7; (1) amended, p. 1648, § 90, effective May 31. L. 2001: (1) amended, p. 1050, § 33, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-16-103 as it existed prior to 1992.

(2) Amendments to subsection (1) by Senate Bill 94-206 and House Bill 94-1275 were harmonized.



## ANNOTATION

**Annotator's note.** Since § 10-16-302 is similar to § 10-16-103 as it existed prior to the 1992 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

**Nonapplicability of provisions to state health plan.** Subsection (2) exempts the state health plan from the provisions of this article. *Parrish v. Rocky Mt. Hosp. and Med. Servs.*, 754 P.2d 1180 (Colo. App. 1988).

**10-16-303. Filing of articles of incorporation.** (1) Whenever any number of persons associate to form a corporation for any of the purposes named in section 10-16-302, they shall submit articles of incorporation which shall be issued in triplicate to the commissioner and the attorney general for examination. After being approved by such officers, the articles shall be filed and recorded in the office of the secretary of state who shall issue a certificate of incorporation. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner.

(2) When not less than the amount required by section 10-16-310 is deposited with the commissioner, as provided for in this part 3, the commissioner shall cause an examination to be made either by the commissioner or some disinterested person, especially appointed by the commissioner for the purpose, who shall certify that the provisions of part 1 of this article and this part 3 have been complied with by said corporation, as far as applicable thereto. Such certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such corporation a certified copy thereof, which, together with a copy of the articles of incorporation, shall be filed in the office of the clerk and recorder of the county wherein the principal office of the company is to be located, before the authority to commence business is granted.

(3) Whenever any such corporation thereafter desires to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, finds the same to have been legally adopted and to be in due legal form and not in conflict with the provisions of law governing such corporations, then, and not otherwise, such certificate of amendment shall be filed with the secretary of state.

(4) Any corporation organized under the laws of this state relating to corporations not for profit prior to July 1, 1967, for the purposes named in section 10-16-302, shall within one year after July 1, 1967, comply with all of the provisions of this section and shall thereupon become subject to and be governed by said provisions.

**Source:** L. 92: Entire article R&RE, p. 1682, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-104 as it existed prior to 1992.

## ANNOTATION

**Annotator's note.** Since § 10-16-303 is similar to §§ 10-8-103, 10-8-116, 10-8-122, 10-8-122.2, 10-16-104, 10-16-114.6, and 10-17-131.6 as they existed prior to the 1992 repeal of part 1 of article 8 and article 17 of this title, and to the 1992 repeal and reenactment of this article 16, relevant cases construing those provisions have been included in the annotations to this section.

**Minimum requirements of all sickness and accident insurance policies.** Compliance with this section will not insulate insurance company from liability for aiding and abetting discrimination. *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988).

**Insurance policy excluding disability coverage for normal pregnancies was discrimi-**

**natory on the basis of sex.** *Civil Rights Comm'n v. Travelers Ins.*, 759 P.2d 1358 (Colo. 1988) (decided prior to the enactment of § 10-16-114.6).

**A policy provision** that benefits were payable for covered expenses incurred within 52 weeks from the date of the first medical expenses for an injury or sickness which is also the basis for the claim, did not forever bar the recovery of claims resulting from any covered injury or sickness that occurred during any previous period. *Bumpers v. Guarantee Trust Life Ins. Co.*, 826 P.2d 358 (Colo. App. 1991).

**10-16-304. Contents of articles.** (1) In addition to the contents required or permitted by the general corporation laws of this state relating to corporations not for profit, the articles of incorporation of any corporation shall comply with the following:

(a) The name of the corporation shall not include the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business. The corporate name of any corporation formed under this article shall not be the same as and shall be distinguishable on the records of the secretary of state from the name of any other corporation authorized to do business in this state; and

(b) The statement of purposes shall be in conformity with the provisions of part 1 of this article and this part 3.

(2) Any such corporation organized prior to July 1, 1967, whose existing articles of incorporation shall not be in substantial conformity with part 1 of this article and this part 3 shall forthwith cause to be adopted and filed, as required in part 1 of this article and in this part 3 such amendments thereto as shall be necessary to effect substantial compliance with part 1 of this article and this part 3.

**Source:** L. 92: Entire article R&RE, p. 1683, § 1, effective July 1. L. 2000: (1)(a) amended, p. 988, § 103, effective July 1.

**Editor's note:** This section is similar to former § 10-16-105 as it existed prior to 1992.

**Cross references:** For corporation laws relating to corporations not for profit, see article 40 of title 7.

**10-16-305. Directors.** (1) The property and lawful business of every such corporation subject to the provisions of part 1 of this article and this part 3 shall be held and managed by a board of trustees or directors with such powers and authority as shall be necessary or incidental to the complete execution of the purposes of each such corporation as limited by its articles or the bylaws. No such board shall be composed of less than ten nor more than twenty-four members. Every such corporation with annual gross subscription income exceeding one million dollars shall have a majority of its board consisting of persons who are not:

(a) Members of the medical or nursing profession; or

(b) Employed by a hospital or clinic or employed by a corporation subject to part 1 of this article and to this part 3; or

(c) Otherwise directly or indirectly connected with hospitals or licensed health care institutions or purveyors of health services in this state.

(2) It is the duty of all members of a board of trustees or directors to represent the interests of the subscribers or members of health service plans of such corporation.

(3) Any such corporation subject to the provisions of part 1 of this article and this part 3 shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its board of trustees or directors and committees having authority of the board of trustees, and shall keep at its registered office or principal office in this state a record of the names and addresses of its subscribers or members of the health service plans of such corporation. All books and records, excluding privileged medical records and personal records of subscribers or members, of such corporation may be inspected by any subscriber, or his agent or attorney at the registered or principal office of the corporation, for any proper purpose at any reasonable time.

**Source:** L. 92: Entire article R&RE, p. 1683, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-106 as it existed prior to 1992.

**10-16-306. Contracts - benefits for long-term care insurance.** Corporations subject to the provisions of part 1 of this article and this part 3 may enter into contracts for the rendering of long-term care insurance, as defined in section 10-19-103 (5), on behalf of any of their subscribers. Such contracts shall comply with article 19 of this title.



**Source: L. 92:** Entire article R&RE, p. 1684, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-107 as it existed prior to 1992.

#### ANNOTATION

**Annotator's note.** Since § 10-16-306 is similar to § 10-16-107 as it existed prior to the 1992 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

**Applicability of equal fee provisions.** The administrator of the state health plan was not

subject to the provisions of this section because § 10-16-103 (2) exempts the state health plan from the provisions of this article. *Parrish v. Rocky Mt. Hosp. and Med. Servs.*, 754 P.2d 1180 (Colo. App. 1988).

**10-16-307. Authority to do business.** No corporation subject to the provisions of part 1 of this article and this part 3 shall transact any business in this state unless it first procures from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on June 30 each year and shall be renewed annually if the corporation has continued to comply with the provisions of part 1 of this article and this part 3.

**Source: L. 92:** Entire article R&RE, p. 1684, § 1, effective July 1; entire section amended, p. 1597, § 119, effective July 1.

**Editor's note:** This section is similar to former § 10-16-110 as it existed prior to 1992.

**10-16-308. Automatic extension of certificate.** When the annual statement of a corporation subject to the provisions of part 1 of this article and this part 3 has been filed and all fees due from the corporation have been tendered, the corporation's certificate of authority to do business in this state shall automatically be extended until such time as the commissioner refuses to relicense such corporation, and when the fee involved in the renewal of an enrollment representative's license has been tendered by the corporation, or the individual representative, the license shall automatically be extended until such time as the commissioner refuses to renew such license.

**Source: L. 92:** Entire article R&RE, p. 1685, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-111 as it existed prior to 1992.

**10-16-309. Requirements for certificate of authority.** (1) The commissioner shall not issue or renew a certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, and other health services plan, unless:

(a) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members, have been filed with the commissioner in accordance with the provisions of section 10-16-107;

(b) The schedule of the dues and fees to be paid by subscribers or members is such as will enable such corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without impairing the guarantee fund required by section 10-16-310.

**Source: L. 92:** Entire article R&RE, p. 1685, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-112 as it existed prior to 1992.

**10-16-310. Surplus - guarantee fund deposit - regulations.** (1) No corporation subject to the provisions of part 1 of this article and this part 3 shall be permitted to do any

business in this state unless, in addition to the other requirements of law, it has and maintains surplus in an amount not less than five percent of the corporation's subscription income collected in the preceding year, not exceeding two million dollars, plus two and one-half percent of such income exceeding two million dollars but not exceeding ten million dollars, plus one percent of such income exceeding ten million dollars; but, in no event shall such surplus be less than one hundred thousand dollars. All corporations subject to the provisions of part 1 of this article and this part 3 shall place on deposit with the commissioner a guarantee fund of cash or approved securities in an amount determined by such formula, but not less than one hundred thousand dollars nor more than one million five hundred thousand dollars. Any amount of said surplus required by this subsection (1) and subsection (3) of this section in excess of one million five hundred thousand dollars shall be maintained by the corporation at all times, but shall not be required to be placed on deposit with the commissioner.

(2) The cash or securities representing the guarantee fund required by this section shall be deposited with the commissioner under joint control in the same manner as prescribed in sections 10-3-206, 10-3-210, and 10-3-211.

(3) The regulations authorized in this subsection (3) are to be promulgated to avoid situations where the transactions of a corporation subject to the provisions of part 1 of this article and this part 3 would create undue financial risks to its subscribers or the people of this state. The commissioner may by regulation establish standards consistent with the risk-based capital models applicable to hospital, medical, and dental service or indemnity corporations developed or adopted by the national association of insurance commissioners which require any such corporation to maintain a greater minimum level of surplus than the specified dollar minimums established by subsection (1) of this section. Such minimum level of surplus shall reflect the type, volume, and nature of the business being transacted. Such regulations may additionally require the submission of an opinion by a qualified actuary which states whether or not the surplus level of the entity is sufficient.

**Source:** L. 92: Entire article R&RE, p. 1685, § 1, effective July 1; (2) amended, p. 1597, § 120, effective July 1. L. 94: (1) amended and (3) added, p. 596, § 3, effective April 7. L. 96: (2) amended, p. 97, § 2, effective July 1.

**Editor's note:** This section is similar to former § 10-16-113 as it existed prior to 1992.

**10-16-311. Group benefits for depositors of banks - benefits for subscribers in public institutions.** (1) Nonprofit hospitals and health service corporations may contract with any bank located and doing business in any community in this state, the population of which does not exceed ten thousand inhabitants, as shown by the last preceding federal census, to provide group hospital and medical benefits for the depositors of such bank if the premiums are paid by the bank as holder of the master contract from authorized deductions from individual member depositors' accounts in such bank in accordance with applicable laws governing such deductions.

(2) (a) No certificate issued, renewed, or reinstated by a corporation subject to the provisions of part 1 of this article and this part 3 shall contain any provision which limits or excludes payments under hospital or medical benefits coverage to or on behalf of the subscriber because the subscriber or any covered dependent is eligible for or receiving medical assistance benefits under articles 4, 5, and 6 of title 25.5, C.R.S.

(b) The requirements of paragraph (a) of this subsection (2) shall apply to all such certificates issued, renewed, or reinstated on or after August 1, 1984.

**Source:** L. 92: Entire article R&RE, p. 1686, § 1, effective July 1. L. 2006: (2)(a) amended, p. 1999, § 38, effective July 1.

**Editor's note:** The provisions of this section are similar to several former provisions of § 10-16-114 as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.



**10-16-312. Contracts with other organizations.** Any corporation subject to the provisions of part 1 of this article and this part 3 may contract with any agency, instrumentality, or political subdivision of the United States of America, or of the state of Colorado for the making available of hospital, medical-surgical, and other health care services, and in aid or furtherance of such contract may accept, receive, and administer in trust, funds directly or indirectly made available by such agency, instrumentality, or political subdivision. Any such corporation may also subcontract with any organization which has contracted with any agency, instrumentality, or political subdivision of the United States of America or of the state of Colorado for the furnishing of hospital, medical-surgical, or other health services by which subcontract such corporation undertakes to furnish the services specified by the basic contract. Any corporation subject to the provisions of part 1 of this article and this part 3 may also enter into agreements or contracts with other similar organizations or corporations licensed to do business in this state or any other state for the transfer of subscribers or members, for the reciprocal or joint provision of benefits to the subscribers or members of such corporation and such organizations, or such other joint undertakings as the corporation's board of directors or trustees may approve.

**Source:** L. 92: Entire article R&RE, p. 1687, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-116 as it existed prior to 1992.

**10-16-313. Licensing of representatives. (Repealed)**

**Source:** L. 92: Entire article R&RE, p. 1687, § 1, effective July 1; (2) amended, p. 1598, § 121, effective July 1. L. 94: Entire section repealed, p. 597, § 4, effective April 7.

**Editor's note:** Prior to its repeal in 1994, the provisions of this section were similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**10-16-314. Payment for examinations of corporations.** A corporation periodically examined by the commissioner shall pay to the commissioner the cost of such examination, as determined by the commissioner.

**Source:** L. 92: Entire article R&RE, p. 1688, § 1, effective July 1. L. 94: Entire section amended, p. 598, § 5, effective April 7.

**Editor's note:** This section is similar to former § 10-16-120 as it existed prior to 1992.

**10-16-315. Revocation of certificate - appeal.** (1) The commissioner shall not make public the result of any examination or investigation of any corporation found to be insolvent or with its capital impaired prior to suspending or revoking the authority of such company to do business in this state. If the commissioner determines, after examination, hearing, or other evidence, that such corporation is in an unsound condition, or has failed to comply with the law, or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public, or to its subscribers, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination, or to perform any legal obligation relative thereto, or refuse on behalf of the corporation to pay the examination charges, the commissioner shall suspend or revoke all certificates of authority granted to said corporation, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers published in the city and county of Denver, which shall have a general state circulation, and no solicitation of new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any

such corporation, unless it is insolvent or its capital impaired, the commissioner shall grant fifteen days in which to show cause why such action should not be taken.

(2) A corporation whose certificate of authority has been suspended or revoked by the commissioner, may appeal any such action to the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(3) The court has the power to make an order suspending or staying the order of the commissioner suspending or revoking the license of a corporation pending the appeal; but the corporation appealing shall give a bond, with sureties satisfactory to the court, in such amount as the court determines to be just and proper, conditioned to pay to the state and to any persons whomsoever any loss that may be sustained by reason of the stay or suspension of such order of said commissioner, and that during the period allowed for taking such appeal, the publication of notice of the revocation or suspension of license of such corporation as provided by this section shall not be made. If the order of the commissioner has been stayed or suspended by the order of said court, such publication shall not be made until after the discharge of such stay or until the affirmation of such order of revocation or suspension.

(4) (Deleted by amendment, L. 92, p. 1598, § 122, effective July 1, 1992.)

(5) (a) In the event of such a finding of insolvency, the commissioner shall have and exercise all of the powers and authority set forth in part 5 of article 3 of this title.

(b) (Deleted by amendment, L. 92, p. 1598, § 122, effective July 1, 1992.)

**Source:** L. 92: Entire article R&RE, p. 1689, § 1, effective July 1; (2), (4), and (5)(b) amended, p. 1598, § 122, effective July 1.

**Editor's note:** This section is similar to former § 10-16-121 as it existed prior to 1992.

**10-16-316. Complaints.** Any individual subscriber of a corporation subject to the provisions of part 1 of this article and this part 3 who is aggrieved by any act or omission of such corporation or its officers, directors, agents, or representatives, may file a statement in writing of such grievance in the office of the commissioner and the commissioner may make such investigation of such grievance as the commissioner deems appropriate. No such investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by any such member or subscriber, or any defense thereto by the corporation involved.

**Source:** L. 92: Entire article R&RE, p. 1691, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-122 as it existed prior to 1992.

**10-16-317. Exemption of direct payment methods.** Nothing contained in part 1 of this article or this part 3 shall be construed to affect or apply to hospitals, or other licensed health care institutions, nor to any individuals, partnerships, associations, or corporations which are the direct purveyors of health services; nor shall anything contained in part 1 of this article or this part 3 be construed to in any way limit the rights of such hospitals, or other licensed health care institutions or purveyors of health services, to establish methods of payment directly with the purchasers of their services; except such methods of payment by all corporations subject to part 1 of this article and this part 3 shall be on a prospective reimbursement basis as required by section 10-16-318; but the commissioner may require from any such institution or purveyor of services such information as will enable the commissioner to determine whether any such arrangements for payment for services are subject to the provisions of part 1 of this article and this part 3.

**Source:** L. 92: Entire article R&RE, p. 1691, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-124 as it existed prior to 1992.



**10-16-317.5. Assignment of benefits.** (1) An individual or group nonprofit hospital or medical service contract issued pursuant to the provisions of this article shall not prohibit a subscriber under the contract from assigning, in writing, benefits payable under the contract to a licensed hospital or other licensed health care provider for services provided to the subscriber which are covered under the contract.

(2) When a licensed hospital or other licensed health care provider receives an assignment from a subscriber it is the responsibility of the provider to bill the contract issuer, including a copy of the assignment, and to mail a copy of such bill to the subscriber or certificate holder, stating on such copy that it is for informational purposes only and that the payor has been billed for covered benefits. The issuer of such nonprofit hospital or medical service contract shall honor such assignment and make payment of covered benefits directly to such licensed hospital or other licensed health care provider. In the event the issuer fails to honor such assignment by making payment to the subscriber and the subscriber, upon receipt of such payment, fails to timely pay an amount equivalent to such payment to the licensed hospital or other licensed health care provider, then the issuer shall be liable for such covered benefits payment directly to the licensed hospital or other licensed health care provider. It shall be the responsibility of the licensed hospital or other licensed health care provider to notify the issuer if timely payment has not been received. In such case, the issuer shall make payment of covered benefits pursuant to section 10-3-1110 (2) within thirty days after receipt of such notification.

(3) (a) Nothing in this section shall be construed to limit any nonprofit hospital, medical-surgical, and health care service corporation from determining the scope of its benefits or services or any other terms of its subscriber contracts, nor from negotiating contracts with licensed providers on reimbursement rates or any other lawful provisions.

(b) Notwithstanding the provisions of subsection (2) of this section, a licensed provider shall not be entitled to payment greater than the lesser of its charges or any level of reimbursement previously negotiated with any nonprofit hospital, medical-surgical, and health care service corporation, if applicable; nor shall such payor have any obligation under this section except for covered benefits.

(4) Nothing in this section shall be construed to prevent any nonprofit hospital, medical-surgical, and health care service corporation from limiting covered benefits to services provided by providers who have contracted with such corporation or from providing different levels of benefits depending on whether the provider has or has not contracted with such corporation.

**Source:** L. 92: Entire section added, p. 1772, § 1, effective May 20.

**Editor's note:** (1) Although the effective date for the repeal and reenactment of this article was July 1, 1992, this section was added, effective May 20, 1992.

(2) This section was enacted as § 10-16-124.5 but, because of the repeal and reenactment of this article, was renumbered on revision for ease of location.

**10-16-318. Prospective reimbursement.** (1) No corporation subject to the provisions of part 1 of this article and this part 3 which provides a service contract as distinguished from a fixed dollar benefit contract shall provide reimbursement for the rendering of hospital care, medical-surgical care, or other health services on behalf of any of its members or subscribers with hospitals except by contract which provides for reimbursement on a prospective reimbursement basis. As used in this part 3, "prospective reimbursement" means a method of reimbursement whereby the purveyor of health services is reimbursed by each corporation subject to part 1 of this article and this part 3 for such services according to a schedule of rates, determined and agreed upon prior to the rendering of the services by both the purveyor of health services and each corporation subject to the provisions of part 1 of this article and this part 3. Such rates are to remain in force during the term of the contract or for one calendar year if a contract has a longer term, except as adjusted as provided in this section.

(2) (a) The bases for the prospective reimbursement rates shall be:

(I) Determined mutually by the corporation and the hospital using established accounting principles and regulations utilized in the health care industry for the determination of reimbursement to purveyors. Historic expenses may be one of the bases for reimbursement but not the sole basis.

(II) Supported by current and predicted costs derived through an appropriate budget and accounting system of the hospital, which budget and accounting system shall be available for discussion in detail with the corporation.

(b) The hospitals' operating requirements and the services offered, geographical characteristics, and the changes in price level indices may be included in the bases for prospective reimbursement.

(c) All such contracts shall be, if deemed necessary and only after the parties have exhausted all other efforts, subject to arbitration by the commissioner under the rules and regulations established by such commissioner.

(3) In order to provide incentives for the efficient and economical utilization of purveyor resources, the reimbursement rate agreed upon by the purveyor and the corporation subject to part 1 of this article and this part 3 shall be neither retroactively increased to reflect unforeseen patient costs nor retroactively decreased as a result of efficient purveyor operation. However, gains accruing to the purveyor as a result of a modification of those patient services, of operating requirements, or of changes in price level indices which were included in the bases for the setting of the prospective rate will be subject to downward adjustment.

(4) Provision shall be made between corporations subject to part 1 of this article and this part 3 and the purveyor of health care services for a mechanism to determine adjustments of prospectively determined rates. Such adjustments will occur when major events that have a fiscal impact occur which were unpredictable or were uncontrollable by the purveyor of health care services and which would require a rate change to meet the financial requirements of the purveyor of health care services.

(5) Corporations subject to part 1 of this article and this part 3 shall not pay more for purveyor's services than will be charged to commercial insurers.

(6) Each corporation subject to the provisions of part 1 of this article and this part 3 shall provide the commissioner with a copy of each contract entered into under this section, within thirty days after such contract is entered into, and such other information as the commissioner deems necessary by rule.

**Source:** L. 92: Entire article R&RE, p. 1691, § 1, effective July 1. L. 96: (6) amended, p. 1230, § 53, effective August 7.

**Editor's note:** This section is similar to former § 10-16-130 as it existed prior to 1992.

**Cross references:** For the legislative declaration contained in the 1996 act amending subsection (6), see section 1 of chapter 237, Session Laws of Colorado 1996.

**10-16-319. Effective date.** Sections 10-16-317 and 10-16-318 shall take effect January 1, 1974, and shall be implemented with the beginning of each hospital's fiscal year.

**Source:** L. 92: Entire article R&RE, p. 1693, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-133 as it existed prior to 1992.

**10-16-320. Investment of funds.** The investable funds of a corporation subject to the provisions of part 1 of this article and this part 3 may only be invested in those types of investments which are permitted by law for the investment of the assets of life insurance companies and in such other types of investments as the commissioner may permit; notwithstanding any condition, restriction, or exclusion set forth in sections 10-3-218 and 10-3-220, any asset used for a home office building or for rental to others held on May 13, 1981, by a company subject to the provisions of this article shall remain an admitted asset



under part 2 of article 3 of this title so long as such company's home office is located in such asset. The provisions of section 10-3-233 shall not apply to such corporation.

**Source:** L. 92: Entire article R&RE, p. 1693, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16-139 as it existed prior to 1992.

**10-16-321. Medicare supplement benefit standards.** The provisions of article 18 of this title shall apply to corporations organized pursuant to the provisions of this part 3. On and after July 1, 1983, no corporation subject to the provisions of part 1 of this article and this part 3 shall deliver or issue for delivery in this state any subscription certificate or membership certificate intended as a medicare supplement policy, as defined in section 10-18-101, or any endorsement, rider, or application which becomes a part thereof, until a copy of the form and of the premium rates or dues pertaining thereto have been filed with the commissioner, nor shall any such certificate endorsement, rider, or application be used until the expiration of thirty days after the filing thereof, unless the commissioner sooner gives written approval thereto and of the premium rates or dues pertaining thereto. Within thirty days of such filing the commissioner shall notify the corporation which has filed any such form in writing if the documents do not comply with the requirements of law or if the rates do not meet the loss ratio standards set forth in section 10-18-105, and shall specify the reasons for such opinion. In all other cases, the commissioner shall give approval. Final orders and decisions of the commissioner relating to medicare supplement policies and rates filed under this section are subject to judicial review as provided in section 24-4-106, C.R.S. All medicare supplement policies, subscription certificates, and benefit forms and the premium rates or dues pertaining thereto which were approved by the commissioner prior to July 1, 1983, shall remain approved under the provisions of this article.

**Source:** L. 92: Entire article R&RE, p. 1693, § 1, effective July 1. L. 94: Entire section amended, p. 1649, § 91, effective May 31.

**Editor's note:** This section is similar to former § 10-16-140 as it existed prior to 1992.

**10-16-322. Filing of health policies.** Nonprofit hospital and health service corporations shall be subject to the requirements regarding the filing of health policies pursuant to section 10-16-107.2.

**Source:** L. 92: Entire section added, p. 1747, § 7, effective June 2.

**Editor's note:** Although the effective date of the repeal and reenactment of this article was July 1, 1992, this section was added, effective June 2, 1992.

**10-16-323. Conversion of corporation to mutual insurance company. (Repealed)**

**Source:** L. 94: Entire section added, p. 598, § 6, effective April 7. L. 96: Entire section repealed, p. 1866, § 2, effective June 6.

**10-16-324. Conversion of corporation to a stock insurance company.** (1) It is the intent of the general assembly by the enactment of this section to create a procedure for nonprofit hospital, medical-surgical, and health service corporations subject to the provisions of part 1 of this article and this part 3 to elect to convert to a stock insurance company subject to article 3 of this title. The general assembly in so doing recognizes the substantial and recent changes in market and health care conditions that are affecting such corporations and further recognizes the need for equal regulatory treatment and competitive equality for health care insurers. The general assembly further finds that a procedure for conversion to a stock insurance company will be in the best interests of policyholders by providing greater

financial stability for such company's policyholders and a greater opportunity to remain a financially independent Colorado company.

(2) Any nonprofit hospital, medical-surgical, and health service corporation, referred to in this section as "corporation", subject to the provisions of part 1 of this article and this part 3 may convert, without reincorporation, to a stock insurance company subject to article 3 of this title under a plan that complies with this section and has been approved by the commissioner pursuant to this section.

(3) In order to convert to a stock insurance company, the corporation shall file with the commissioner a plan for such conversion and apply for an amended certificate of authority pursuant to part 1 of article 3 of this title. The plan shall be available to the public for inspection both at the office of the commissioner and at the office of the proponent of the plan.

(4) The plan shall set forth with specificity the terms and conditions of the proposed conversion and shall do all of the following:

(a) Certify that the plan has been adopted by a majority vote of the board of directors of the corporation;

(b) Establish that the plan and the proposed conversion will not be prejudicial to the subscribers of the corporation or the citizens of the state of Colorado;

(c) Provide a comparative premium rate analysis of the corporation's major plans and product offerings, comparing actual premium rates for the three-year period prior to the filing of the plan and projected premium rates for the three-year period following any proposed conversion. Any such rate analysis shall address the projected impact, if any, of the proposed conversion upon the cost to subscribers as well as the projected impact, if any, of the proposed conversion upon the corporation's underwriting profit, investment income, and loss and claim reserves, including the effect, if any, of adverse market or risk selection upon such reserves.

(d) Provide for the protection of all existing contractual rights of the corporation's subscribers or contract holders for medical and hospital service or claims for reimbursement thereof;

(e) (I) Specify a reasonable treatment for the benefit of the citizens of the state of Colorado of the value of the corporation on all of the following terms that must be approved by the commissioner:

(A) Such treatment shall be deemed to be reasonable if consideration, determined by the commissioner to be equal to the fair market value of the corporation, is conveyed or issued to one or more qualifying entities;

(B) The commissioner shall determine the fair market value of the corporation at the time of conversion, determined as if it had voting stock outstanding and one hundred percent of its stock were freely transferable and available for purchase without restrictions. Consideration shall be given to market value, investment or earnings value, net asset value, and a control premium, if any. If a qualifying entity or entities receive, at the time of conversion, one hundred percent of the shares of the then-outstanding stock of the corporation, the qualifying entity or entities shall be regarded as having acquired the fair market value of the corporation, unless the commissioner finds that such outstanding stock does not represent the fair market value of the corporation.

(C) Nothing contained in sub-subparagraphs (A) and (B) of this subparagraph (I) shall require the auction, sale, or marketing of the corporation or require the commissioner to fix a dollar valuation of the corporation at the time of conversion;

(D) During the first three years after conversion, to avoid dilution of the value of the qualifying entity's ownership of stock, the corporation or its affiliates may not issue stock greater in seniority, including voting rights, or dividends, than the stock, if any, initially transferred to the qualifying entity. The commissioner may waive the requirements of this sub-subparagraph (D) regarding voting rights, if the commissioner determines that the corporation has transferred to the qualifying entity or entities a benefit equivalent to such voting rights.

(E) Each qualifying entity, its directors, officers, and staff shall be and remain independent of the converted stock insurance company and its affiliates and no person who is an officer, director, or staff member of the corporation at the time the plan is submitted or



at the time of conversion or thereafter shall be qualified to be an officer, director, or staff member of the qualifying entity. Nothing in this sub-subparagraph (E) shall prohibit a single member of the board of each qualifying entity, selected by such qualifying entity, from serving on the board of the corporation or the board of a holding company that owns the corporation. No director, officer, agent, or employee of the corporation shall benefit directly or indirectly from the conversion of the corporation.

(F) The charitable mission and grant-making functions of each qualifying entity must be dedicated to promoting or serving the health care needs of the citizens of Colorado; except that in no event shall any qualifying entity use the consideration (or any proceeds or gains thereon) transferred to it by the corporation to compete directly as a licensed carrier as defined in section 10-16-102 (8) with the corporation or any of its affiliates;

(G) The commissioner may permit all or a portion of the consideration conveyed to any qualifying entity to consist of stock of the corporation or a holding company which owns the corporation. Stock transferred to a qualifying entity may be restricted as set out in the plan approved by the commissioner.

(H) Repealed.

(I) At the time of the conversion, the corporation or a holding company that owns the corporation may issue additional voting shares of stock through an initial public offering or private placement, which stock shall not be included in the consideration transferred to a qualifying entity.

(II) (A) For purposes of this paragraph (e), a "qualifying entity" means an independent tax-exempt charitable or social welfare organization, operating under sections 501(c)(3) or 501(c)(4) of title 26 of the United States Code, the federal "Internal Revenue Code of 1986", as amended.

(B) Whether the qualifying entity is organized under said sections 501 (c) (3) or 501 (c) (4) of the federal "Internal Revenue Code of 1986", as amended, the articles of incorporation of the qualifying entity shall contain at least the following provisions: The qualifying entity shall be organized and operated exclusively for charitable, educational, or scientific purposes consistent with sub-subparagraph (F) of subparagraph (I) of this paragraph (e); the qualifying entity shall engage in lobbying or political activities only to the extent permitted an organization exempt under section 501 (c) (3) of the internal revenue code; the qualifying entity shall not engage in campaign activity or the making of political contributions; no part of the net earnings of the qualified entity may inure to the benefit of any individual; the qualifying entity may not engage in any self dealing for the benefit of its directors, officers, or employees; the qualifying entity shall report to the public at least annually information equivalent to that required of organizations qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended. Nothing in this sub-subparagraph (B), however, shall require that a qualified entity divest itself of stock of the corporation.

(C) A "qualifying entity" shall be newly established for purposes of the conversion authorized in this section, unless otherwise approved by the commissioner.

(f) Specify the proposed amendments to the corporation's articles of incorporation, bylaws, and other documents of organization to effectuate the conversion;

(g) Specify the proposed form of notice of the proposed conversion to be published as set forth in subsection (6) of this section; and

(h) Provide such other information as determined by the commissioner to be reasonably necessary and relevant to the evaluation of the plan.

(5) The commissioner may retain, upon notice to the corporation, any qualified expert, such as attorneys, accountants, actuaries, and financial analysts, not otherwise a part of the commissioner's staff, to assist in reviewing the proposed plan, with such reasonable expenses incurred during the review to be borne by the corporation.

(6) Within thirty days after filing the plan of conversion and application for an amended certificate of authority, the corporation shall:

(a) Publish notice, in a form and in newspapers to be approved by the commissioner, of the proposed plan of conversion once a week for three consecutive weeks in at least one daily newspaper of general circulation in the counties in which the corporation does business;

(b) Cause notice, in a form and manner to be approved by the commissioner, of the proposed plan of conversion to be delivered by regular mail to all current subscribers; and

(c) Submit to the commissioner proof of publication of the notice required by paragraph (a) of this subsection (6) and properly executed amendments to the corporation's articles of incorporation, bylaws, and other organizational documents to effectuate the conversion authorized by this section.

(7) The commissioner shall hold a hearing pursuant to article 4 of title 24, C.R.S., before making a final decision to approve or disapprove the plan of conversion within sixty days after completion of publication of notice of the hearing thereon. The commissioner shall issue an order approving or disapproving the plan or approving an amended plan within sixty days after completion of the hearing.

(8) Upon mutual agreement of the corporation and the commissioner, the commissioner may enter an order extending any time limits within this section.

(9) The commissioner shall approve the plan of conversion if the commissioner finds that:

(a) The plan meets the requirements of subsection (4) of this section;

(b) The plan is fair and reasonable and not contrary to law or to the interests of subscribers, contract holders, or the public; and

(c) Upon conversion, the corporation will meet the standards and conditions applicable to stock insurance companies, including minimum surplus required of such companies.

(10) The conversion shall become effective as specified in the plan of conversion and when the revised articles of incorporation have been adopted.

(11) The corporate existence of the corporation shall not terminate upon conversion as provided for in this section, but the converted stock company shall be deemed to be a continuation of the corporation and to have been organized on the date the corporation was originally organized. Conversion under this section will not cause a dissolution of the corporation.

(12) Except as specifically provided for in this section, upon completion of its conversion to a stock insurance company as provided in this section, the corporation shall no longer be subject to this article and shall be subject to and comply with all laws and regulations applicable to a stock insurance company as provided in article 3 of this title, including all other requirements of a stock insurer as contained in this title.

(13) In the year of conversion, the corporation shall be obligated to pay the subscriber fee provided in section 10-16-110 (1) (c) for the portion of the year before the effective date of the conversion and premium taxes as a stock insurer pursuant to section 10-3-209 for premiums collected or contracted for the portion of the year from and including the effective date of the conversion.

(14) The converted stock insurance company shall be a member insurer under the "Life and Health Insurance Protection Association Act" as provided by article 20 of this title. All subscribers of the corporation existing on the date of conversion will be afforded coverage and protection in accordance with the terms and conditions of the said act. The converted stock insurance company will be subject to assessments as provided in article 20 of this title, and its share of any class B assessment made under section 10-20-109 (3) (b) shall be calculated, as applicable, based upon any Colorado premium or subscriber fees received by it during the calendar years immediately preceding its conversion to a stock insurance company; except that nothing in this subsection (14) shall require the converted stock insurance company to be assessed for insolvencies relating to member insurers who became insolvent insurers prior to the effective date of the conversion.

(15) Any final action by the commissioner pursuant to subsection (7) of this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S., at the initiation of the corporation seeking conversion to a newly created stock insurance company, or any person that was a party to the agency proceeding and was adversely affected or aggrieved by the final agency decision. The remedies set forth in this subsection (15) are exclusive remedies for any person aggrieved by a final action of the commissioner under this section.



**Source:** L. 96: Entire section added, p. 1861, § 1, effective June 6. L. 99: (4)(e)(I)(H) repealed, p. 1005, § 1, effective May 29.

## ANNOTATION

**Interests protected by this section** include those of a policyholder of the corporation to be converted and of a coalition of nonprofit organizations that could be adversely affected if the entity established to receive the consideration under this section was not sufficiently funded. Accordingly, these persons had standing to challenge the insurance commissioner's order approving the conversion. *Hawes v. Colo. Div. of Ins.*, 32 P.3d 571 (Colo. App. 2001).

**Fair market value is not conclusively determined by the highest bid.** Where \$160 million offer was conditioned on surrender of a significant contractual right and was not accepted, commissioner of insurance was not required to value corporation at \$160 million.

*Hawes v. Colo. Div. of Ins.*, 32 P.3d 571 (Colo. App. 2001).

**The commissioner may award attorney fees** under the common fund doctrine where it is necessary for the commissioner to discharge his or her responsibilities in an equitable conversion proceeding of a nonprofit corporation to a for-profit stock insurance company pursuant to § 10-16-324 and if nothing prohibits such an award. However, the commissioner does not have discretion to award attorney fees for lobbying effort conducted prior to the establishment of the commissioner's authority to preside over the conversion proceeding. *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008 (Colo. 2003).

## PART 4

### HEALTH MAINTENANCE ORGANIZATIONS

**10-16-401. Establishment of health maintenance organizations.** (1) The general assembly recognizes that health care coverage may be offered to the citizens of this state by various entities with distinct organizational and functional forms. The placement of this part 4 in this article should in no way be construed so as to alter the distinct organizational and functional character of health maintenance organizations or to alter the legal distinctions between such organizations and other health care coverage entities.

(2) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with part 1 of this article and this part 4; however, the general assembly declares that nothing in part 1 of this article or this part 4 shall be construed to ensure the success of any health maintenance organization and the state accepts no responsibility for the financial obligations of such organizations. No person shall establish or operate a health maintenance organization in this state, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this part 4. A foreign corporation may qualify under this part 4 subject to its registration to do business in this state as a foreign corporation.

(3) Every health maintenance organization as of July 6, 1973, shall submit an application for a certificate of authority under subsection (4) of this section within one hundred eighty days of the said date. Each such applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied under section 10-16-402, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

(4) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

(a) A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto, in triplicate, for examination by the commissioner and attorney general. Where required, said articles shall be filed and recorded in the office of the secretary of state who shall issue a certificate of incorporation. A copy of such articles shall be filed with the commissioner.

- (b) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
- (c) A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;
- (d) A copy of any contract made or to be made between any providers or persons listed in paragraph (c) of this subsection (4) and the applicant;
- (e) A statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;
- (f) A copy of the form of evidence of coverage to be issued to the enrollees;
- (g) A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;
- (h) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of part 1 of this article and this part 4.
- (i) A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding;
- (j) A power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and the commissioner's successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;
- (k) A statement reasonably describing the geographic area or areas to be served;
- (l) A description of the complaint procedures to be utilized as required under section 10-16-409;
- (m) A description of the procedures and programs to be implemented to meet the quality of health care requirements in section 10-16-402 (1) (b);
- (n) A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section 10-16-404 (2);
- (o) Such other information as the commissioner may require to make the determinations required in section 10-16-402;
- (p) An access plan for each separate network of the health maintenance organization as specified in section 10-16-704 (9). To the extent that the information in the access plan contains the required information specified in paragraphs (e), (f), (k), (l), (m), and (n) of this subsection (4), the health maintenance organization shall be deemed to be in compliance with said paragraphs.
- (5) A health maintenance organization shall, unless otherwise provided for in part 1 of this article or this part 4, file a notice describing any modification of the operation set out in the information required by subsection (4) of this section. Such notice shall be filed with the commissioner prior to the modification. If the commissioner does not disapprove within thirty days of filing, such modification shall be deemed approved.

**Source:** L. 92: Entire article R&RE, p. 1694, §1, effective July 1; (4)(a) amended, p. 1599, § 123, effective July 1. L. 97: (4)(p) added, p. 1332, § 3, effective July 1.

**Editor's note:** This section is similar to former § 10-17-103 as it existed prior to 1992.

**10-16-402. Issuance of certificate of authority - denial.** (1) (a) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall forthwith transmit copies of such application and accompanying documents to the executive director.



(b) The executive director shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(I) Has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility, and continuity of service;

(II) Has arrangements, established in accordance with regulations promulgated by the executive director, for an ongoing quality of health care assurance program concerning health care processes and outcomes; and

(III) Has a procedure, established in accordance with regulations of the executive director, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and such other matters as may be reasonably required by the executive director.

(c) Within thirty days of receipt of the application for issuance of a certificate of authority, the executive director shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of paragraph (b) of this subsection (1). If the executive director certifies that the health maintenance organization does not meet such requirements, the executive director shall specify in what respects it is deficient.

(2) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 10-16-401 within thirty days of receipt of the certification from the executive director. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 10-16-110 (2) if the commissioner is satisfied that the following conditions are met:

(a) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(b) The executive director certifies in accordance with subsection (1) of this section that the health maintenance organization's proposed plan of operation meets the requirements of paragraph (b) of subsection (1) of this section;

(c) (I) The health maintenance organization will effectively provide or arrange for the provision of basic health care services, through insurance or otherwise, except to the extent of reasonable requirements for copayments, deductibles, and payments for out-of-network services received pursuant to section 10-16-704 (2).

(II) Nothing in this paragraph (c) shall prohibit a carrier from offering to a small employer additional options of a health benefit plan that:

(A) Provides for different benefits for insureds and dependents of insureds covered by the same policy; and

(B) Encourages appropriate health care condition management based on clinical guidelines by providing case management benefits to covered persons.

(d) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(I) The financial soundness of the health care plan's arrangements for health care services and the schedule of charges used in connection therewith;

(II) The adequacy of working capital;

(III) Any agreement with an insurer, a nonprofit hospital, medical-surgical, and health service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

(IV) Any agreement with providers for the provision of health care services;

(V) Any surety bond or deposit of cash or securities submitted in accordance with section 10-16-412 as a guarantee that the obligations will be duly performed.

(e) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section 10-16-404;

(f) Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 10-16-401 or by independent investigation, is contrary to the public interest;

(g) Any deficiencies certified by the executive director have been corrected.

(3) A certificate of authority shall be denied only after compliance with the requirements of section 10-16-419.

(4) A certificate of authority shall expire on the last day of June in each year and shall be renewed annually if the company has continued to comply with the laws of this state.

**Source:** L. 92: Entire article R&RE, p. 1696, § 1, effective July 1; (4) added, p. 1599, § 124, effective July 1. L. 93: (2)(d)(V) amended, p. 1772, § 26, effective June 6. L. 2002: (2)(c) amended, p. 1296, § 11, effective January 1, 2003. L. 2003: (2)(c) amended, p. 1778, § 13, effective January 1, 2004. L. 2006: (2)(c)(I) amended, p. 1491, § 16, effective June 1.

**Editor's note:** This section is similar to former § 10-17-104 as it existed prior to 1992.

**10-16-403. Powers of health maintenance organizations.** (1) The powers of a health maintenance organization include, but are not limited to, the following:

(a) The purchase, lease, construction, renovation, operation, and maintenance of hospitals, medical facilities, nursing care and intermediate care facilities, and other institutions of like nature, their ancillary equipment, and such property as may reasonably be required for its administrative offices or for such other purposes as may be necessary to accomplish the business of the organization;

(b) The making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities, hospitals, nursing care and intermediate care facilities, and other institutions of a like nature providing health care services to enrollees;

(c) The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;

(d) The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(e) The contracting with an insurance company licensed in this state, or with a nonprofit hospital, medical-surgical, and health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization;

(f) The offering, in addition to basic health care services, of:

(I) Additional health care services;

(II) Indemnity benefits not exceeding twenty percent of net medical and hospital expenses incurred on an annual basis;

(III) Indemnity benefits, in addition to benefits provided directly or indirectly through contracts with providers, by the health maintenance organization, through insurers or nonprofit hospital, medical-surgical, and health service corporations;

(g) The offering of contracts for the rendering of long-term care insurance, as defined in section 10-19-103 (5), on behalf of any of its enrollees. Such contracts shall comply with article 19 of this title.

(h) Repealed.

(2) (a) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in the introductory portion or paragraph (a) of subsection (1) of this section. The commissioner shall disapprove such exercise of power, if in the commissioner's opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within thirty days of the filing, it shall be deemed approved.

(b) The commissioner may promulgate rules and regulations exempting from the filing requirement of paragraph (a) of this subsection (2) those activities having a de minimis effect.



**Source:** L. 92: Entire article R&RE, p. 1698, § 1, effective July 1. L. 94: (1)(a) and (1)(b) amended, p. 1629, § 27, effective May 31. L. 99: (1)(f) amended, p. 80, § 1, effective July 1. L. 2009: (1)(h) added, (HB 09-1143), ch. 114, p. 479, § 2, effective August 5.

**Editor's note:** (1) This section is similar to former § 10-17-105 as it existed prior to 1992.

(2) Subsection (1)(h) provided for the repeal of subsection (1)(h), effective July 1, 2012. (See L. 2009, p. 479.)

**Cross references:** For the legislative declaration contained in the 2009 act adding subsection (1)(h), see section 1 of chapter 114, Session Laws of Colorado 2009.

**10-16-404. Governing body.** (1) The governing body of any health maintenance organization may include providers, other individuals, or both.

(2) Such governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

**Source:** L. 92: Entire article R&RE, p. 1700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-106 as it existed prior to 1992.

**10-16-405. Fiduciary responsibilities.** Any director, officer, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

**Source:** L. 92: Entire article R&RE, p. 1700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-107 as it existed prior to 1992.

**10-16-406. Evidence of coverage.** Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a nonprofit hospital, medical-surgical, and health service corporation, whether by option or otherwise, the insurer or the nonprofit hospital, medical-surgical, and health service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

**Source:** L. 92: Entire article R&RE, p. 1700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-108 as it existed prior to 1992.

**10-16-407. Information to enrollees.** (1) Every health maintenance organization shall annually provide to its enrollees:

(a) The most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements;

(b) A description of the organizational structure and operation of the health care plan and a summary of any material changes since the issuance of the last report;

(c) A description of services and information as to where and how to secure them; and

(d) A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

(2) Every health maintenance organization shall clearly state in its brochures, contracts, policy manuals, and printed materials distributed to enrollees that such enrollees shall have the option of calling the local prehospital emergency medical service system by dialing the

emergency telephone access number 9-1-1 or its local equivalent whenever an enrollee is confronted with a life or limb threatening emergency. For the purposes of this section, a "life or limb threatening emergency" means any event that a prudent lay person would believe threatens his or her life or limb in such a manner that a need for immediate medical care is created to prevent death or serious impairment of health. No enrollee shall in any way be discouraged from using the local prehospital emergency medical service system, the 9-1-1 telephone number, or the local equivalent, or be denied coverage for medical and transportation expenses incurred as a result of such use in a life or limb threatening emergency.

(3) (a) A health maintenance organization that offers basic health care services to enrollees through a limited health benefit plan pursuant to section 10-16-403 (1) (h) shall clearly state in its brochures, contracts, policy manuals, and printed materials distributed to enrollees the following information:

(I) That a limited health benefit plan may impose a limit on the total maximum benefit amount available to the enrollee on an annual basis and on the total maximum benefit amounts available for particular health care services provided during a given year;

(II) The specific amount of the annual total maximum benefit amount and the annual total maximum amount for particular health care services covered by the limited health benefit plan; and

(III) That once the enrollee receives the total maximum amount of benefits under the limited health benefit plan in any given year, or receives the total maximum amount of benefits for a particular health care service in a given year, the enrollee is responsible for paying out-of-pocket for the costs of any health care services provided to the enrollee during that year that exceed the total annual maximum benefit amount or the total maximum benefit amount for a particular health care service, as applicable.

(b) The health maintenance organization shall ensure that the information required by this subsection (3) is prominently displayed, in bold-faced font in at least fourteen-point type, on any materials provided to enrollees.

(c) (I) Each enrollee who participates in a limited health benefit plan shall sign the following statement of understanding indicating his or her understanding of the limitations of the plan:

#### STATEMENT OF UNDERSTANDING

I, \_\_\_\_\_, understand that I am enrolling in a limited health benefit plan that contains a total maximum annual amount of benefits available to me and my covered dependents each plan year for basic health care services. The total maximum annual benefit amount is \_\_\_\_.

I understand that once I receive the total maximum amount of benefits under the limited health benefit plan in a plan year, I am fully responsible for paying out-of-pocket for the costs or charges for any health care services I or my covered dependents receive during the remaining portion of the plan year.

I understand that I may exhaust my total annual maximum benefit amount while I am or a covered dependent is undergoing treatment for an illness or injury and that I will be responsible for paying the costs of treatment provided after I have exhausted my benefits under the limited health benefit plan.

I understand that if I exhaust my total annual maximum benefit amount in a plan year, I or my covered dependent may or may not be eligible for the state Medicaid program, the Colorado Indigent Care Program, or other public programs, and that it is solely my choice and responsibility to investigate my options and eligibility for participation in any public program.

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Signature of Enrollee

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Date



(II) The health maintenance organization shall retain the original, signed statement of understanding, shall provide a copy to the enrollee, and shall make the statement available to the commissioner upon request.

**Source:** L. 92: Entire article R&RE, p. 1700, § 1, effective July 1; (2) added, p. 1789, § 1, effective January 1, 1993. L. 2002: (2) amended, p. 1295, § 10, effective January 1, 2003. L. 2009: (3) added, (HB 09-1143), ch. 114, p. 481, § 3, effective August 5.

**Editor's note:** (1) This section is similar to former § 10-17-110 as it existed prior to 1992.

(2) Subsection (2) of this section was numbered as § 10-17-110 (2) in Senate Bill 92-104 but was renumbered on revision and harmonized with this section since article 17 was repealed and the substantive provisions of § 10-17-110 were moved to this section.

**Cross references:** For the legislative declaration contained in the 2009 act adding subsection (3), see section 1 of chapter 114, Session Laws of Colorado 2009.

**10-16-408. Open enrollment.** (1) After a health maintenance organization has been in operation twenty-four months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or deny such application within thirty days of the receipt thereof from the health maintenance organization.

(2) Health maintenance organizations providing or arranging for services exclusively on a group contract basis may limit the open enrollment provided for in subsection (1) of this section to all members of the group or groups covered by such contracts.

(3) Except as provided in subsection (2) of this section, the enrollment policies of health maintenance organizations may not be such as to prevent or hinder the enrollment by, or in any other manner discriminate against, persons eligible for medical benefits under Titles XVIII and XIX of the federal "Social Security Act" as authorized under Public Law 89-97; such policies shall be grounds for suspension or revocation of the organization's certificate of authority issued pursuant to this article.

**Source:** L. 92: Entire article R&RE, p. 1701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-111 as it existed prior to 1992.

**10-16-409. Complaint system.** (1) (a) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner, after consultation with the executive director, to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(b) Each health maintenance organization shall maintain in a form prescribed by the commissioner after consultation with the executive director, for examination by the commissioner or the executive director, which shall include:

(I) A description of the procedures of such complaint system;

(II) The total number of complaints handled through such complaint system and a compilation of causes underlying the complaints filed;

(III) The number, amount, and disposition of malpractice claims settled during the year by the health maintenance organization and any of the providers used by it which involve services covered by the health maintenance organization.

(2) The health maintenance organization shall maintain records of written complaints filed with it concerning other than health care services and shall submit to the commissioner a summary report at such times and in such format as the commissioner may require. Such

complaints involving other persons shall be referred to such persons with a copy to the commissioner.

(3) The commissioner or the executive director may examine such complaint system subject to the limitations concerning medical records of individuals set forth in section 10-16-416 (3).

**Source:** L. 92: Entire article R&RE, p. 1701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-112 as it existed prior to 1992.

#### ANNOTATION

**No conflict exists between the Health Care Availability Act and the Colorado Health Maintenance Organization Act.** An agreement to arbitrate professional negligence claims obtained on behalf of persons or entities that unquestionably are health care providers must comply with the provisions of the Health Care Availability Act. *Evans v. Colo. Permanente Medical Group, P.C.*, 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).

**If dispute resolution procedures include arbitration of professional negligence claims** against health care providers who provide medical services, the patient must be notified of this fact in a manner consistent with the Health Care Availability Act requirements; this section does not conflict with requirements of that act. *Evans v. Colo. Permanente Medical Group, P.C.*, 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).

**10-16-410. Investments.** With the exception of investments made in accordance with section 10-16-403 (1) (a) and (2), the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit.

**Source:** L. 92: Entire article R&RE, p. 1702, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-113 as it existed prior to 1992.

**10-16-411. Protection against insolvency.** (1) (a) Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization have an initial minimum surplus of one million five hundred thousand dollars. "Surplus" means total assets less all liabilities with the exception of long-term loans from the secretary of the United States department of health and human services or other loan or obligation with terms and conditions acceptable to the commissioner. Such loan or obligation shall be considered equity until such time as the funding source shall declare that repayment shall commence. Upon such declaration, the amount necessary to fund the repayments, including accrued interest thereon, for the ensuing twelve months will be included as a direct liability and so classified in the determination of minimum surplus as provided by this subsection (1).

(a.5) The minimum surplus required by paragraph (a) of this subsection (1) may be reduced by up to five hundred thousand dollars if the health maintenance organization has available to it an administrative infrastructure that the commissioner considers appropriate to reduce, control, or eliminate start-up costs associated with the administration of the health maintenance organization. Such infrastructure includes office space and equipment, computer systems, software, management services contract, and personnel recruitment fees.

(b) Every health maintenance organization shall maintain a minimum surplus at least equal to one million dollars.

(c) and (d) (Deleted by amendment, L. 99, p. 80, § 2, effective July 1, 1999.)

(1.5) (a) Notwithstanding any provision of subsection (2) or (4) of this section to the contrary, a health maintenance organization whose sole business is providing health care services to recipients under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the children's basic health plan, article 8 of title 25.5, C.R.S., or medicare



under Title XVIII of the federal "Social Security Act", as amended, shall maintain a minimum surplus of not less than four million dollars and shall maintain a claims liability within its financial statement equal to the greater of:

(I) One month of federal and state reimbursements received by the health maintenance organization for services provided to health care recipients; or

(II) The health maintenance organization's total outstanding claims liabilities.

(b) A health maintenance organization subject to this subsection (1.5) annually shall submit an opinion by a qualified actuary that attests that the health maintenance organization's surplus level and outstanding claims liability meet the requirements of this subsection (1.5).

(2) The commissioner may, by rule, establish standards consistent with the risk-based capital models applicable to managed care organizations developed or adopted by the national association of insurance commissioners that require any such corporation to maintain a greater minimum level of surplus than the specified dollar minimums established by subsection (1) of this section. Such minimum level of surplus shall reflect the type, volume, and nature of the business being transacted. Such rules may additionally require the submission of an opinion by a qualified actuary that states whether or not the surplus level of the entity is sufficient.

(3) If a health maintenance organization fails to comply with the surplus requirements of this section, the commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be detrimental to its enrollees.

(4) (a) If the initial application of this section would cause a reduction in the total capital and surplus of a health maintenance organization of ten percent or more or would cause the capital and surplus of a health maintenance organization to fall to or below the company action level as defined by the commissioner by rule, such health maintenance organization may, within thirty days after the effective date of such rule, file with the commissioner a request to phase in the requirements of this section over a period not to exceed three years or another time period as approved by the commissioner.

(b) Any request made pursuant to paragraph (a) of this subsection (4) shall include a complete analysis, in a form prescribed by the commissioner, of the impact upon the health maintenance organization making the request, that is expected to result from application of this section and, if a phase-in is requested, a description of the health maintenance organization's plan for the phase-in period. The commissioner shall not deny a request for a phase-in except upon notice and an opportunity for a hearing as provided in section 24-4-105, C.R.S.

(c) Any request for a hearing made pursuant to paragraph (b) of this subsection (4) shall include a description of the basis upon which relief is sought. Upon receipt of such a request, the commissioner shall, with regard to the health maintenance organization making the request, postpone the effective date of the section pending the conclusion of the hearing and the taking of final agency action thereon. The hearing shall commence within sixty days after the commissioner receives the request and shall be conducted in accordance with section 24-4-105, C.R.S.

**Source:** L. 92: Entire article R&RE, p. 1702, § 1, effective July 1. L. 99: Entire section amended, p. 80, § 2, effective July 1. L. 2007: (1.5) added, p. 1355, § 5, effective May 29.

**Editor's note:** This section is similar to former § 10-17-114 as it existed prior to 1992.

**10-16-412. Statutory deposit.** (1) Unless otherwise provided in subsections (2) and (3) of this section, each health maintenance organization shall furnish cash or securities acceptable to the commissioner to be held by the commissioner under joint control in the same manner as prescribed in sections 10-3-206, 10-3-210, and 10-3-211. The primary purpose of this deposit shall be to protect the interests of the enrollees and to assure continuation of health care services to enrollees of a health maintenance organization and to cover reasonable administration costs attributed to rehabilitation, liquidation, or conservation under section 10-16-418.

(2) (a) Every health maintenance organization shall have an initial deposit of three hundred thousand dollars.

(b) (Deleted by amendment, L. 99, p. 83, § 3, effective July 1, 1999.)

(3) Health maintenance organizations shall establish and maintain the following minimum deposits:

(a) The following schedule, based upon enrollment levels achieved on December 31 of the preceding year:

(I) to (III) (Deleted by amendment, L. 99, p. 83, § 3, effective July 1, 1999.)

(IV) \$300,000: Enrollment of not less than 60,000;

(V) \$350,000: Enrollment of 60,000 but less than 100,000;

(VI) \$400,000: Enrollment of 100,000 or more.

(b) The statutory deposit shall at all times equal or exceed twenty-five percent of the health maintenance organization's uncovered expenditures for the previous calendar year. At such time as the deposit is less than twenty-five percent of the health maintenance organization's uncovered expenditures for the previous calendar year, additional deposits will be required to maintain this level. The maximum deposit required, however, shall not exceed one million dollars.

(4) (a) If the initial application of this section would create undue financial risks to the enrollees of a health maintenance organization, such health maintenance organization may, within thirty days after July 1, 1999, file with the commissioner a request to phase in the requirements of this section over a period not to exceed three years or another time period as approved by the commissioner.

(b) Any request made pursuant to paragraph (a) of this subsection (4) shall include a complete analysis, in a form prescribed by the commissioner, of the impact upon the health maintenance organization making the request, that is expected to result from application of this section and, if a phase-in is requested, a description of the health maintenance organization's plan for the phase-in period. The commissioner shall not deny a request for a phase-in except upon notice and an opportunity for a hearing as provided in section 24-4-105, C.R.S.

(c) Any request for a hearing made pursuant to paragraph (b) of this subsection (4) shall include a description of the basis upon which relief is sought. Upon receipt of such a request, the commissioner shall, with regard to the health maintenance organization making the request, postpone the effective date of the section pending the conclusion of the hearing and the taking of final agency action thereon. The hearing shall commence within sixty days after the commissioner receives the request and shall be conducted in accordance with section 24-4-105, C.R.S.

**Source:** L. 92: Entire article R&RE, p. 1704, § 1, effective July 1. L. 99: (2) and (3) amended and (4) added, p. 83, § 3, effective July 1.

**Editor's note:** This section is similar to former § 10-17-114.5 as it existed prior to 1992.

**10-16-413. Prohibited practices.** (1) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of part 1 of this article and this part 4:

(a) A statement or item of information is deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan.

(b) A statement or item of information is deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist.



(c) An evidence of coverage is deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(2) Part 11 of article 3 of this title shall apply to health maintenance organizations, health care plans, and evidences of coverage except to the extent that the commissioner determines that the nature of health maintenance organizations, health care plans, and evidences of coverage render such article clearly inapplicable.

(3) An enrollee may not be cancelled or nonrenewed on the basis of the status of such enrollee's health.

(4) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business and shall be distinguishable on the records of the secretary of state from the name or description of any insurance or surety corporation doing business in this state.

**Source:** L. 92: Entire article R&RE, p. 1705, § 1, effective July 1. L. 2000: (4) amended, p. 988, § 104, effective July 1.

**Editor's note:** This section is similar to former § 10-17-115 as it existed prior to 1992.

**10-16-413.5. Return to home - legislative declaration.** (1) The general assembly hereby finds that:

(a) As individuals "age-in-place" in their own homes or other settings, they frequently contract with continuing care retirement communities or assisted living, nursing, or Alzheimer facilities to receive the services they need in order to maximize their independence;

(b) Elderly and disabled persons select particular facilities because of proximity to family and friends, religious affiliation, reputation in the community, or the security offered in a particular setting;

(c) Some health care service plan contracts require that an enrollee be placed in a skilled nursing facility participating in the plan;

(d) Requiring an elderly or disabled person to move into an unfamiliar environment can be traumatic and have an adverse effect on the person's psychological, social, and physical well-being;

(e) Elderly and disabled persons who require hospitalization need to be able to "return to home" without interference from health care coverage providers, if the facility is able to provide the needed services and is willing to accept payment on the same terms as a network provider.

(2) As used in this section, unless the context otherwise requires:

(a) "Continuing care" means furnishing, pursuant to an agreement, shelter, food, and either nursing care or personal services whether such nursing care or personal services are provided in a facility or another setting designated by the agreement for continuing care, nursing care, or personal care services, to an individual not related by consanguinity or affinity to the provider furnishing care upon payment of an entrance or rental fee.

(b) "Enrollee" means an individual who is eligible for health care benefits under a contract with a carrier.

(3) On and after January 1, 2000, no carrier, including a carrier that offers a medicare supplement policy pursuant to article 18 of this title, shall deny payment for continuing care provided to an enrollee even if the provider is not under contract with the carrier if all of the following apply:

(a) The service is a covered benefit under the terms of the contract covering the enrollee;

(b) The enrollee:

(I) Prior to being hospitalized, resided where the continuing care services are to be provided;

(II) Had a contractual or other right to return to such location; and

(III) Returned to such location regardless of whether he or she returned to a different part of a facility in which he or she resided prior to hospitalization;

(c) The level of care that the enrollee needs may be provided at the location where the continuing care services are to be provided and the location is licensed by the state of Colorado as a skilled nursing facility and certified as participating in medicare; and

(d) With respect to an enrollee returning to the location where the continuing care services are to be provided pursuant to this section, the provider of continuing care services agrees to abide by the same terms and conditions that apply to participating providers under contract with the carrier, including but not limited to:

(I) Utilization review, quality assurance, peer review, and access to health care services; and

(II) Management and administrative procedures including data and financial reporting procedures that may be required by the carrier.

(4) The carrier shall pay the provider of continuing care services for covered benefits at the same rate for the same level and intensity of services as providers under contract with the carrier.

(5) The enrollee shall have a cause of action against the carrier for a violation of this section. The action may be commenced by the enrollee or on behalf of the enrollee by an adult relative, friend, or guardian of the enrollee who has an interest in or the responsibility for the enrollee's welfare.

**Source: L. 99:** Entire section added, p. 1095, § 1, effective June 1.

**10-16-414. Regulation of agents.** The commissioner may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. An agent means a person directly or indirectly associated with a health care plan who engages in solicitation or enrollment.

**Source: L. 92:** Entire article R&RE, p. 1706, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-116 as it existed prior to 1992.

**10-16-415. Powers of insurers and nonprofit hospital, medical-surgical, and health service corporations.** (1) An insurance company licensed in this state, or a nonprofit hospital, medical-surgical, and health service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of part 1 of this article and this part 4. Notwithstanding any other law which may be inconsistent, any two or more such insurance companies, nonprofit hospital, medical-surgical, and health service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. An insurance company shall not be considered in violation of the laws regulating insurance by the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(2) Notwithstanding any other provision of law, an insurer or a nonprofit hospital, medical-surgical, and health service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under such contracts, the insurer or nonprofit hospital, medical-surgical, and health



service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers pursuant to contracts with health maintenance organizations.

**Source: L. 92:** Entire article R&RE, p. 1706, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-117 as it existed prior to 1992.

**10-16-416. Examination.** (1) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements pursuant to its health care plan as often as the commissioner deems it necessary for the protection of the interests of the people of this state but not less frequently than once every five years.

(2) The executive director may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements pursuant to its health care plan as often as the executive director deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(3) Every health maintenance organization and provider shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. Medical records of individuals and records of physicians providing service under a contract to the health maintenance organization shall not be subject to such examination, although they may be subject to subpoena upon a showing of good cause. For the purpose of examinations, the commissioner and the executive director may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such providers concerning their business.

(4) The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner or the executive director for whom the examination is being conducted.

(5) In lieu of such examination, the commissioner or the executive director may accept the report of an examination made by the commissioner or the head of the health department of another state.

(6) To supplement the examination powers of the commissioner, as provided in this section, the commissioner may request or require any foreign company, entity, or new applicant, or any domestic company may make a request to the commissioner, to be examined by independent examiners certified by the society of financial examiners, actuaries who are members of the American academy of actuaries, or other qualified loss reserve specialists, independent risk managers, independent certified public accountants, or other qualified examiners of insurance companies deemed competent by the commissioner, or any combination of such qualified persons. The commissioner may also accept, as part of the commissioner's examination, reports made by any qualified person pursuant to this subsection (6). Neither such persons nor members of their immediate families shall be officers of, connected with, or financially interested in the entity, company, or applicant being examined other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination, investigation, or hearing. The commissioner shall establish guidelines for assuring the neutrality of those persons to be authorized to supplement the examination procedures authorized in this section. The reasonable expenses and charges of such persons so retained or designated shall be paid directly by any foreign company, entity, or new applicant or domestic company to any such outside authorized examiner.

**Source: L. 92:** Entire article R&RE, p. 1706, § 1, effective July 1. **L. 97:** (1) amended, p. 530, § 3, effective April 24.

**Editor's note:** This section is similar to former § 10-17-118 as it existed prior to 1992.

**10-16-417. Suspension or revocation of certificate of authority.** (1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization pursuant to part 1 of this article and this part 4 if the commissioner finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to section 10-16-401, unless amendments to such submissions have been filed with and approved by the commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of section 10-16-406;

(c) The health care plan does not provide or arrange for basic health care services;

(d) The executive director certifies to the commissioner that:

(I) The health maintenance organization does not meet the requirements of section 10-16-402 (1) (b); or

(II) The health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its health care plan;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation pursuant to section 10-16-404;

(g) The health maintenance organization has failed to implement the complaint system required by section 10-16-409 in a manner to reasonably resolve valid complaints;

(h) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(j) The health maintenance organization has otherwise failed to substantially comply with part 1 of this article or this part 4.

(2) A certificate of authority shall be suspended or revoked only after compliance with the requirements of section 10-16-419.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as the commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

**Source:** L. 92: Entire article R&RE, p. 1708, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-119 as it existed prior to 1992.

**10-16-418. Rehabilitation, liquidation, or conservation of health maintenance organization.** (1) Any rehabilitation, liquidation, or conservation of a health maintenance organization is deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the



law governing the rehabilitation, liquidation, or conservation of insurance companies, except as otherwise provided in this section.

(2) A provider which has not expressly agreed to hold enrollees harmless if the provider is not paid by the health maintenance organization may elect to take the priority of a person stated in section 10-3-541 (1) (b); except that, if such election is made, the claim by such provider shall only be paid upon condition that the provider shall not assert such claim against any enrollee of the health maintenance organization.

**Source:** **L. 92:** Entire article R&RE, p. 1709, § 1, effective July 1. **L. 94:** (2) amended, p. 1630, § 28, effective May 31.

**Editor's note:** This section is similar to former § 10-17-120 as it existed prior to 1992.

**Cross references:** For provisions pertaining to the rehabilitation and liquidation of insurers, see part 5 of article 3 of this title.

**10-16-419. Administrative procedures.** (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, the commissioner shall notify the health maintenance organization and the executive director in writing specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least twenty days but, in the case of a denial, not more than sixty days thereafter for a hearing on the matter.

(2) The executive director or such executive director's designated representative shall be in attendance at the hearing and shall participate in the proceedings. The recommendations and findings of the executive director with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority shall be conclusive and binding upon the commissioner. After such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the commissioner shall take action as is deemed advisable on written findings which shall be mailed to the health maintenance organization with a copy thereof to the executive director.

(3) The provisions of article 4 of title 24, C.R.S., shall apply to proceedings under this section to the extent they are not in conflict with subsections (1) and (2) of this section, and any final action of the commissioner pursuant to this section shall be subject to judicial review by the court of appeals.

**Source:** **L. 92:** Entire article R&RE, p. 1710, § 1, effective July 1; (3) amended, p. 1600, § 125, effective July 1.

**Editor's note:** This section is similar to former § 10-17-122 as it existed prior to 1992.

**Cross references:** For judicial review by the court of appeals, see § 24-4-106.

**10-16-420. Penalties and enforcement.** (1) The commissioner may, in lieu of suspension or revocation of a certificate of authority under section 10-16-417 and pursuant to the provisions of article 4 of title 24, C.R.S., levy an administrative penalty in an amount not less than one hundred dollars nor more than five hundred dollars, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may augment this penalty by an amount equal to the sum that the commissioner calculates to be the damages suffered by enrollees or other members of the public.

(2) (a) If the commissioner or the executive director, for any reason, has cause to believe that any violation of part 1 of this article or this part 4 has occurred or is threatened prior to levy of a penalty or suspension or revocation of a certificate of authority, the commissioner or the executive director shall give notice to the health maintenance orga-

nization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violations.

(b) Proceedings under this subsection (2) shall not be governed by any formal procedural requirements, and may be conducted in such manner as the commissioner or the executive director may deem appropriate under the circumstances.

(3) (a) The commissioner may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of part 1 of this article or this part 4.

(b) Within thirty days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of part 1 of this article or this part 4 have occurred. Such hearings shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(4) In the case of any violation of the provisions of part 1 of this article or this part 4, if the commissioner elects not to issue a cease-and-desist order or in the event of noncompliance with a cease-and-desist order issued pursuant to subsection (3) of this section, the commissioner may institute a proceeding to obtain injunctive relief or seek other appropriate relief through the attorney general.

(5) Any final action of the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 92: Entire article R&RE, p. 1710, § 1, effective July 1; (5) added, p. 1600, § 126, effective July 1. L. 94: (1) amended, p. 1630, § 29, effective May 31.

**Editor's note:** This section is similar to former § 10-17-124 as it existed prior to 1992.

**10-16-421. Statutory construction and relationship to other laws.** (1) Except for sections 10-1-102, 10-1-116, 10-1-117, 10-1-118, 10-3-109 (2), 10-3-118, 10-3-128, 10-3-208, and 10-8-530 (1.5), part 2 of article 1 of this title, and parts 4 to 8 of article 3 of this title, and as otherwise provided in this article, the provisions of the insurance law and provisions of nonprofit hospital, medical-surgical, and health service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this part 4.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals; but such health professionals shall be individually subject to the laws, rules and regulations, and ethical provisions governing their individual profession.

(3) Any health maintenance organization authorized under part 1 of this article and this part 4 shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine.

**Source:** L. 92: Entire article R&RE, p. 1712, § 1, effective July 1; (1) amended, p. 1600, § 127, effective July 1. L. 94: (1) amended, p. 1630, § 30, effective May 31. L. 97: (1) amended, p. 93, § 4, effective March 24. L. 99: (1) amended, p. 84, § 4, effective July 1. L. 2001: (1) amended, p. 287, § 13, effective March 30; (1) amended, p. 1050, § 34, effective July 1. L. 2003: (1) amended, p. 618, § 19, effective July 1. L. 2004: (1) amended, p. 991, § 13, effective August 4.

**Editor's note:** (1) This section is similar to former § 10-17-125 as it existed prior to 1992.

(2) Amendments to subsection (1) by House Bill 01-1064 and House Bill 01-1319 were harmonized.



## ANNOTATION

**Breach of contract or tort claim may not be brought against a health maintenance organization** for negligently providing or failing to provide medical services and plaintiffs' attempt to distinguish "health care services" from "medical services" was not factually presented to the trial court in a timely manner. *Evans v. Colo. Permanente Medical Group, P.C.*, 902 P.2d 867 (Colo. App. 1995), *aff'd in part and rev'd in part on other grounds*, 926 P.2d 1218 (Colo. 1996).

**"Provisions of the insurance law" construed.** In subsection (1), "provisions of the insurance law", when read in the context of this article (on health maintenance organizations), refers to the provisions of title 10 concerning general statutory regulations of the insurance industry. *Rederscheid v. Comprefcare, Inc.*, 667 P.2d 766 (Colo. App. 1983).

**10-16-421.5. Acquisition of control of or merger of a health maintenance organization.** No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, (or by conversion or by exercise of any right to acquire) be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization information required by sections 10-3-801, 10-3-802, 10-3-803 (2) to (10), and 10-3-803.5 and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner.

**Source:** L. 92: Entire section added, p. 1600, § 128, effective July 1.

**10-16-422. Filings and reports as public documents.** All applications, filings, and reports required under part 1 of this article and this part 4 shall be treated as public documents.

**Source:** L. 92: Entire article R&RE, p. 1712, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-126 as it existed prior to 1992.

**10-16-423. Confidentiality of health information.** Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of part 1 of this article or this part 4; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent; or as otherwise required or permitted by state or federal law. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure that the provider, who furnished such information to the health maintenance organization, is entitled to claim.

**Source:** L. 92: Entire article R&RE, p. 1712, § 1, effective July 1. L. 2003: Entire section amended, p. 1785, § 18, effective July 1.

**Editor's note:** The provisions of this section were similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

## ANNOTATION

A patient's medical record may be examined by the patient's health maintenance organization (HMO) to the extent it is relevant to the claims against the HMO when the patient sues the HMO for the medical care it

provided to the patient. A review of the patient's complete medical record is relevant to the HMO's ability to prepare a defense. *Ortega v. Colo. Permanente Med. Group, P.C.*, 265 P.3d 444 (Colo. 2011).

**10-16-424. Executive director's authority to contract.** The executive director, in carrying out his obligations pursuant to sections 10-16-402 (1) (b), 10-16-416 (2), and 10-16-417 (1), may contract with qualified persons to make recommendations concerning the determinations required to be made by such executive director. Such recommendations may be accepted in full or in part by the executive director.

**Source:** L. 92: Entire article R&RE, p. 1713, § 1, effective July 1.

**Editor's note:** The provisions of this section were similar to provisions of several former sections as they existed prior to 1992. For a detailed comparison, see the comparative tables located in the back of the index.

**10-16-425. Applicability of provisions.** Nothing contained in part 1 of this article or this part 4 shall be construed to affect or apply to any trust, association, or nonprofit corporation which is established and administered by an employer, a labor organization or labor organizations, or jointly by an employer and a labor organization or labor organizations, and which on or after July 6, 1973, provides or arranges for health care services only for employees of such employer and members of the families of such employees, or only for members of such labor organization or labor organizations and the families of such members, and for no other person or persons.

**Source:** L. 92: Entire article R&RE, p. 1713, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-129 as it existed prior to 1992.

**10-16-426. Medicare supplement benefit standards.** Except for the requirements of section 10-18-105, the provisions of article 18 of this title shall not apply to all health maintenance organizations granted a certificate of authority under part 1 of this article or this part 4.

**Source:** L. 92: Entire article R&RE, p. 1713, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-132 as it existed prior to 1992.

**10-16-427. Contractual relations.** (1) Every contract between a health maintenance organization and a medical group, independent practice association, or health professional employed by a health maintenance organization shall be written and include a hold harmless provision which shall provide that in the event a health maintenance organization fails to pay for health care services rendered to an enrollee pursuant to a written contract between the health maintenance organization and a medical group, independent practice association, or health professional employed by the health maintenance organization, the enrollee shall not be liable for any moneys owed by the health maintenance organization.

(2) No medical group, independent practice association, or health professional employed by a health maintenance organization referred to in subsection (1) of this section or any agent, trustee, or contractee thereof may maintain any action against an enrollee for sums owed by the health maintenance organization.

**Source:** L. 92: Entire article R&RE, p. 1713, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-17-133 as it existed prior to 1992.



**10-16-428. Prohibition concerning state-funded medical assistance. (Repealed)**

**Source:** **L. 92:** Entire article R&RE, p. 1714, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1594, § 2, effective July 1.

**Editor's note:** This section is similar to former § 10-17-134 as it existed prior to 1992.

**PART 5****PREPAID DENTAL CARE PLANS**

**10-16-501. Legislative declaration.** It is the policy of the general assembly and the intent and purpose of this part 5 to promote the availability and assure the competent quality of dental care on a prepaid basis, and to thereby promote the health and welfare of the people of Colorado. The general assembly recognizes that health care coverage may be offered to the citizens of this state by various entities with distinct organizational and functional forms. The placement of this part 5 in this article should in no way be construed so as to alter the distinct organizational and functional character of prepaid dental care plans or to alter the legal distinctions between such plans and other health care coverage entities.

**Source:** **L. 92:** Entire article R&RE, p. 1714, § 1, effective July 1. **L. 94:** Entire section amended, p. 1649, § 92, effective May 31.

**Editor's note:** This section is similar to former § 10-16.5-102 as it existed prior to 1992.

**10-16-502. Establishment of prepaid dental care plan organizations.** (1) No person, unless otherwise authorized pursuant to this title, may establish or operate a prepaid dental care plan organization in this state or sell or offer to sell, or solicit offers to purchase, or receive advanced or periodic consideration in conjunction with a prepaid dental care plan without obtaining and maintaining a certificate of authority pursuant to part 1 of this article and this part 5.

(2) Within ninety days after January 1, 1980, every prepaid dental care plan organization operating in this state and pursuant to part 1 of this article and this part 5 shall submit an application for a certificate of authority to the commissioner. Each such applicant may continue to operate as an organization until the commissioner acts upon the application.

(3) A prepaid dental care plan organized under part 1 of this article and this part 5 shall be subject to part 5 and part 11 of article 3 of this title but shall not be subject to any other laws of this state relating to insurance or insurance companies.

**Source:** **L. 92:** Entire article R&RE, p. 1714, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-104 as it existed prior to 1992.

**10-16-503. Application for certificate of authority.** (1) An application for a certificate of authority to operate as a prepaid dental care plan organization formed under part 1 of this article and this part 5 shall be filed with the commissioner on a form prescribed by the commissioner. Such application shall be verified by an officer or authorized representative of the applicant and shall set forth, or be accompanied by, the following:

(a) A copy of any basic organizational document of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments to such documents;

(b) A copy of all bylaws, rules and regulations, or similar documents regulating the conduct of the internal affairs of the applicant;

(c) A list of the names, addresses, and official positions of the persons who are responsible for the conduct of the affairs of the applicant, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other

governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(d) If the prepaid dental care plan organization is a corporation, evidence that the board of directors of such corporation includes:

(I) Dentists, duly licensed pursuant to article 35 of title 12, C.R.S., who have contracted with the corporation to render dental care services to enrollees;

(II) Enrollees of the prepaid dental care plan, who shall comprise at least one-third of the members of the board;

(e) A copy of any contract made or to be made between any providers or persons listed in paragraph (c) of this subsection (1) and the applicant;

(f) A statement generally describing the prepaid dental care plan organization and its dental plan or plans, facilities, and personnel;

(g) A copy of the form of enrollee coverage to be issued to the enrollees;

(h) A copy of the form of any group contract which is to be issued to employers, unions, trustees, or other applicants;

(i) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of part 1 of this article and this part 5.

(j) A description of the proposed method of marketing the prepaid dental care plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding;

(k) A power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner as the true and lawful attorney of such applicant in and for this state, upon whom all lawful process in any legal action or proceeding against the prepaid dental care plan organization on a cause of action arising in this state may be served;

(l) Repealed.

(m) Such other information as the commissioner may require.

(2) Any existing domestic prepaid dental care plan organization with fifteen hundred or more dental plan enrollees on January 1, 1980, shall have three years to meet the requirements of sections 10-16-505 and 10-16-506. However, such organization shall submit with its application or certificate of authority, a plan approved by the commissioner to meet the requirements of sections 10-16-505 and 10-16-506 at ten percent the first year of operation, fifty percent the second year of operation, and one hundred percent the third year of operation. In addition to exemptions provided elsewhere in this subsection (2), the commissioner may grant a one-year waiver from the provisions of this subsection (2).

(3) Within ten days following any significant modification of any matter furnished pursuant to subsection (1) of this section, a prepaid dental care plan organization shall file notice of such modification together with such supporting documents as are necessary to fully explain the modification with the commissioner.

**Source:** L. 92: Entire article R&RE, p. 1715, § 1, effective July 1; (1)(l) repealed, p. 1601, § 129, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-105 as it existed prior to 1992.

**10-16-504. Issuance of certificate of authority.** (1) Issuance of a certificate of authority shall be granted by the commissioner if the commissioner is satisfied that the following conditions are met:

(a) The requirements of section 10-16-503 have been fulfilled;

(b) The prepaid dental care plan organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees;

(c) The agreement with providers for the provision of prepaid dental care services has been deemed sufficient;



(d) Each officer responsible for conducting the affairs of the prepaid dental care plan organization has filed with the commissioner, subject to the commissioner's approval, a fidelity bond in the amount of fifty thousand dollars.

(2) A certificate of authority shall expire at 12 midnight on June 30 next following the date of issuance or renewal and shall be renewed as provided in section 10-3-117. A prepaid dental care plan organization shall pay a renewal fee as prescribed pursuant to section 10-3-207.

**Source:** L. 92: Entire article R&RE, p. 1717, § 1, effective July 1; (2) amended, p. 1601, § 130, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-106 as it existed prior to 1992.

**10-16-505. Guarantee fund deposit.** (1) A prepaid dental care plan organization subject to the provisions of part 1 of this article and this part 5 shall place on deposit with the commissioner a guarantee fund of cash, approved securities, or letter of credit approved by the commissioner in the amount of two dollars per enrollee for all enrollees entitled to dental care services pursuant to contracts issued by the prepaid dental care plan or ten thousand dollars, whichever is greater.

(2) The cash or securities representing the guarantee fund required by this section shall be deposited with the commissioner under joint control in the same manner as prescribed in sections 10-3-206, 10-3-210, and 10-3-211.

(3) An unpaid final judgment arising upon an enrollee coverage shall be a lien on the deposit prescribed by subsection (1) of this section, subject to execution after thirty days from the entry of final judgment. If the deposit is reduced, it shall be replenished within ninety days by the prepaid dental care plan organization.

(4) Upon liquidation or dissolution of a prepaid dental care plan organization formed under part 1 of this article and this part 5 and the satisfaction of all its debts and liabilities, any balance remaining of the deposit prescribed in subsection (1) of this section together with any other assets of the prepaid dental care plan organization shall be returned by the commissioner to the prepaid dental care plan organization.

(5) The deposit prescribed by subsection (1) of this section shall not apply with respect to a prepaid dental care plan organization which is funded by a federal, state, or municipal government or by any political subdivision thereof to the extent and for such period of time that the prepaid dental care plan organization can demonstrate to the commissioner the presence of operational commitments from such sources equivalent to such deposit.

**Source:** L. 92: Entire article R&RE, p. 1717, § 1, effective July 1; (2) amended, p. 1601, § 131, effective July 1. L. 96: (2) amended, p. 97, § 3, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-107 as it existed prior to 1992.

**10-16-506. Reserve requirement - exception.** (1) A prepaid dental care plan organization formed under part 1 of this article and this part 5 at all times shall maintain for protection of enrollees a financial reserve consisting of two percent of prepaid charges collected from enrollees for the plan, until such reserve totals five hundred thousand dollars. Such reserve shall be in addition to the deposit prescribed by section 10-16-505.

(2) The reserve prescribed by subsection (1) of this section shall not apply with respect to a prepaid dental care plan organization which is funded by a federal, state, or municipal government or by any political subdivision thereof and which meets the requirements of section 10-16-505 (5).

**Source:** L. 92: Entire article R&RE, p. 1718, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-108 as it existed prior to 1992.

**10-16-507. Enrollee coverage by prepaid dental care plan organizations.** (1) Every enrollee in a prepaid dental care plan shall be issued an enrollee coverage form by the prepaid dental care plan organization.

(2) (a) No contract issued, renewed, or reinstated by a prepaid dental care plan organization shall contain any provision which limits or excludes payments under hospital or medical benefits coverage to or on behalf of the enrollee because the enrollee is eligible for or receiving medical assistance benefits under articles 4, 5, and 6 of title 25.5, C.R.S.

(b) The requirements of paragraph (a) of this subsection (2) shall apply to all such contracts issued, renewed, or reinstated on or after August 1, 1984.

**Source:** L. 92: Entire article R&RE, p. 1719, § 1, effective July 1. L. 2006: (2)(a) amended, p. 2000, § 39, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-109 as it existed prior to 1992.

**10-16-508. Examination of prepaid dental care plan organization.** (1) The commissioner may visit once in each six months for the first three years after organization and once each year thereafter, or more often if deemed necessary by the commissioner, each prepaid dental care plan organization organized under part 1 of this article and this part 5 and examine its financial condition and its ability to meet its liabilities and its compliance with the laws of this state affecting the conduct of its business. The commissioner may visit and examine annually each prepaid dental care plan organization not organized under the laws of this state but authorized to transact business in this state.

(2) The commissioner may in like manner examine each prepaid dental care plan organization applying for an initial certificate of authority to do business in this state under part 1 of this article and this part 5.

(3) In lieu of making an examination, the commissioner may accept a full report of the most recent examination of a foreign or alien prepaid dental care plan organization, certified to by the appropriate examining official of another state, territory, commonwealth, or district of the United States.

**Source:** L. 92: Entire article R&RE, p. 1719, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-110 as it existed prior to 1992.

**10-16-509. Operational expenses.** No more than thirty percent of prepaid charges in the first year of any contract, twenty-five percent of prepaid charges in the second year of any contract, and twenty percent of prepaid charges in any subsequent contract year shall be used for the marketing and administrative expenses of a prepaid dental care plan organization, including all costs related to soliciting enrollees and providers.

**Source:** L. 92: Entire article R&RE, p. 1720, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-112 as it existed prior to 1992.

**10-16-510. Suspension or revocation of certificate of authority.** (1) The commissioner may suspend or revoke any certificate of authority issued to a prepaid dental care plan organization pursuant to part 1 of this article and this part 5 if the commissioner finds that any of the following conditions exist:

(a) The prepaid dental care plan organization is operating significantly in contravention of its basic organizational document or its prepaid dental care plan or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to section 10-16-503, unless amendments to such submissions have been filed with and approved by the commissioner;



(b) The prepaid dental care plan organization issues evidence of coverage or uses a schedule of charges for prepaid dental care services which do not comply with the requirements of section 10-16-507;

(c) The prepaid dental care plan does not provide or arrange for basic prepaid dental care services;

(d) The prepaid dental care plan organization is unable to fulfill its obligations to furnish prepaid dental care services as required under its care plan;

(e) The prepaid dental care plan organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The prepaid dental care plan organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation pursuant to section 10-16-503 (1) (d);

(g) The prepaid dental care plan organization, or any person on its behalf, has advertised or merchandised its prepaid dental care services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(h) The continued operation of the prepaid dental care plan organization would be hazardous to its enrollees;

(i) The prepaid dental care plan organization has otherwise failed to substantially comply with part 1 of this article or this part 5.

(2) When the commissioner has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the prepaid dental care plan organization in writing specifically stating the grounds for suspension or revocation and fixing a time of at least twenty days but not more than sixty days thereafter for a hearing on the matter.

(3) After such hearing, or upon the failure of the prepaid dental care plan organization to appear at such hearing, the commissioner shall take action as is deemed advisable on written findings which shall be mailed to the prepaid dental care plan organization.

(4) The provisions of article 4 of title 24, C.R.S., shall apply to proceedings under this section to the extent they are not in conflict with subsections (2) and (3) of this section.

(5) (a) The commissioner may, in lieu of suspension or revocation of a certificate of authority and pursuant to the provisions of article 4 of title 24, C.R.S., levy an administrative penalty in an amount not less than one hundred dollars nor more than five hundred dollars, if reasonable notice in writing is given of the intent to levy the penalty and the prepaid dental care plan organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may augment this penalty by an amount equal to the sum that the commissioner calculates to be the damages suffered by enrollees or other members of the public.

(b) (I) If the commissioner, for any reason, has cause to believe that any violation of part 1 of this article or this part 5 has occurred or is threatened, prior to levy of a penalty or suspension or revocation of a certificate of authority, the commissioner shall give notice to the prepaid dental care plan organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

(II) Proceedings under this paragraph (b) shall not be governed by any formal procedural requirements and may be conducted in such manner as the commissioner may deem appropriate under the circumstances.

(c) (I) The commissioner may issue an order directing a prepaid dental care plan organization or a representative of a prepaid dental care plan organization to cease and desist from engaging in any act or practice in violation of the provisions of part 1 of this article or this part 5.

(II) Within thirty days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of part 1 of this article or this part 5 have occurred. Such hearings shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(d) In the case of any violation of the provisions of part 1 of this article or this part 5 if the commissioner elects not to issue a cease-and-desist order, or in the event of noncompliance with a cease-and-desist order issued pursuant to paragraph (c) of this subsection (5), the commissioner may institute a proceeding to obtain injunctive relief or seek other appropriate relief through the attorney general.

(6) When the certificate of authority of a prepaid dental care plan organization is suspended, the prepaid dental care plan organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees and shall not engage in any advertising or solicitation whatsoever.

(7) When the certificate of authority of a prepaid dental care plan organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as the commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing prepaid dental care coverage.

(8) Any final action of the commissioner pursuant to this section shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source:** L. 92: Entire article R&RE, p. 1720, § 1, effective July 1; (8) added, p. 1602, § 132, effective July 1.

**Editor's note:** This section is similar to former § 10-16.5-114 as it existed prior to 1992.

**10-16-511. Rehabilitation, liquidation, or conservation of prepaid dental care plan organization.** Any rehabilitation, liquidation, or conservation of a prepaid dental care plan organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurer and shall be conducted pursuant to part 5 of article 3 of this title.

**Source:** L. 92: Entire article R&RE, p. 1723, § 1, effective July 1; entire section amended, p. 1499, § 31, effective July 1.

**Editor's note:** (1) This section is similar to former § 10-16.5-115 as it existed prior to 1992.

(2) Amendments made to § 10-16.5-115 by section 31 of chapter 203, Session Laws of Colorado 1992, have been harmonized with this section since article 16.5 was repealed and the substantive provisions of former § 10-16.5-115 were moved to this section.

**10-16-512. Other laws applicable.** In addition to the provisions of part 1 of this article and this part 5, the laws governing insurance companies, except as they are inconsistent with the provisions or purposes of this article, shall apply to prepaid dental care plans regulated pursuant to the provisions of part 1 of this article and this part 5.

**Source:** L. 92: Entire section added, p. 1602, § 133, effective July 1.



## PART 6

ACCOUNTABILITY OF INDEPENDENT MEDICAL  
EXAMINERS TO THEIR PATIENTS

**10-16-601. Legislative declaration.** The general assembly declares that the intent of this part 6, which shall only apply to this title and not to articles 40 to 47 of title 8, C.R.S., is to ensure that patients have access to the best possible health care decisions and information and to increase the confidence of consumers that doctors will be truly independent medical examiners.

**Source:** L. 96: Entire part added, p. 566, § 1, effective April 24.

**10-16-602. Definitions.** As used in this part 6, unless the context otherwise requires:

(1) "Doctor" means a person licensed as a doctor under title 12, C.R.S., to provide health care to a patient.

(2) "Insurer" means a sickness and accident insurer and any health maintenance organization; fraternal benefit society; nonprofit hospital, medical-surgical, and health services corporation; prepaid health plans; or other entity providing health care coverage or health benefits or health care services, whether as a principal, indemnitor, surety, or contractor, authorized by the commissioner to conduct business in Colorado. "Insurer" also includes a self-insurer providing any health coverage or health benefit or health care services certificate, agreement, contract, policy, or plan; except that the term "insurer" under this part 6 shall apply only to this part 6 and shall not include an insurer or self-insured employer under articles 40 to 47 of title 8, C.R.S.

(3) "Patient" means an individual covered by, or denoted as an insured, subscriber, enrollee, or purchaser under any health coverage or health benefit or health care services certificate, agreement, contract, policy, or plan. "Patient" also includes a covered employee or dependent of an insured person.

**Source:** L. 96: Entire part added, p. 566, § 1, effective April 24. L. 2004: (2) amended, p. 903, § 25, effective May 21.

**10-16-603. Independent medical examinations - governing standard.** All independent medical examinations performed by a doctor shall be performed in accordance with generally accepted professional standards of practice or care. It shall be unprofessional conduct for a doctor to perform an independent medical examination not in accordance with generally accepted professional standards of practice or care.

**Source:** L. 96: Entire part added, p. 567, § 1, effective April 24.

**10-16-604. Financial interest in future care of patient prohibited.** No doctor that performs an independent medical examination shall have a financial or economic interest in the type or duration of treatment or the results of the examination.

**Source:** L. 96: Entire part added, p. 567, § 1, effective April 24.

**10-16-605. Independence of examiners.** No insurer, employer, employee, patient, or agent or representative thereof shall attempt to dictate to any doctor performing an independent medical examination the type or duration of treatment or the results of the examination.

**Source:** L. 96: Entire part added, p. 567, § 1, effective April 24.

**10-16-606. Applicability.** Nothing in this part 6 shall be construed to apply to any action under articles 40 to 47 of title 8, C.R.S.

**Source: L. 96:** Entire part added, p. 567, § 1, effective April 24.

## PART 7

### CONSUMER PROTECTION STANDARDS ACT FOR THE OPERATION OF MANAGED CARE PLANS

**10-16-701. Short title.** This part 7 shall be known and may be cited as the "Consumer Protection Standards Act for the Operation of Managed Care Plans".

**Source: L. 97:** Entire part added, p. 1325, § 2, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Managed Health Care in Colorado: Current Consumer Protection Standards", see 27 Colo. Law. 91 (July 1998).

**10-16-702. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the purposes of this part 7 are:

- (a) To incorporate consumer protections in the creation and maintenance of provider networks by carriers;
- (b) To establish standards to assure the adequacy, accessibility, and quality of health care services offered under a managed care plan; and
- (c) To establish requirements for written agreements between carriers offering managed care plans and participating providers regarding the standards, terms, and provisions under which the participating provider will provide services to covered persons.

**Source: L. 97:** Entire part added, p. 1325, § 2, effective July 1.

**10-16-703. Applicability.** This part 7 applies to all managed care plans, except for workers' compensation and automobile insurance contracts, that are issued, renewed, extended, or modified on or after January 1, 1998.

**Source: L. 97:** Entire part added, p. 1325, § 2, effective July 1.

**10-16-704. Network adequacy - rules - legislative declaration.** (1) A carrier providing a managed care plan shall maintain a network that is sufficient in numbers and types of providers to assure that all covered benefits to covered persons will be accessible without unreasonable delay. In the case of emergency services, covered persons shall have access to health care services twenty-four hours per day, seven days per week. Sufficiency shall be determined in accordance with the requirements of this section and may be established by reference to any reasonable criteria used by the carrier, including but not limited to:

- (a) Provider-covered person ratios by specialty, which may include the use of providers through telemedicine for services that may appropriately be provided through telemedicine;
- (b) Primary care provider-covered person ratios;
- (c) Geographic accessibility, which in some circumstances may require the crossing of county or state lines;
- (d) Waiting times for appointments with participating providers;
- (e) Hours of operation;
- (f) The volume of technological and specialty services available to serve the needs of covered persons requiring covered technologically advanced or specialty care; and



(g) An adequate number of accessible acute care hospital services within a reasonable distance, travel time, or both.

(2) (a) In any case where the carrier has no participating providers to provide a covered benefit, the carrier shall arrange for a referral to a provider with the necessary expertise and ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the benefit were obtained from participating providers.

(b) (I) A carrier offering a managed care plan with out-of-network benefits, that is not a health maintenance organization or a health maintenance organization with a point of service plan, may require that a covered person travel a reasonable distance beyond the requirements of subsection (6) of this section for care within an adequate provider network in order to receive services from a participating provider. This paragraph (b) shall only apply if:

(A) The covered person resides outside of a metropolitan statistical area or primary metropolitan statistical area and the carrier has no participating providers to provide covered benefits in such geographic area; and

(B) The carrier demonstrates upon request by the commissioner, that the carrier has made unsuccessful good faith efforts to contract with local providers on reasonable terms.

(II) Subparagraph (I) of this paragraph (b) shall not apply to:

(A) Emergency services or primary care providers; and

(B) Cases in which the covered person is so severely ill or impaired that such person is unable to move from place to place without the aid of a mechanical device; has a physical or mental condition, verified by a physician licensed to practice medicine in this state or practicing medicine pursuant to section 12-36-106 (3) (i), C.R.S., that substantially limits the person's ability to move from place to place; or suffers from a physical hardship such that travel would threaten the safety or welfare of the covered person as verified by the covered person's in-network treating physician. Decisions in which a carrier contests the covered person's ability to travel may be appealed pursuant to section 10-16-113 or 10-16-113.5.

(c) (I) In cases where, as a result of the provisions of subparagraph (I) of paragraph (b) of this subsection (2), a covered person is required to travel a reasonable distance beyond the requirements of subsection (6) of this section for an adequate network in order to receive services from a participating provider, and the covered person knowingly seeks services from a nonparticipating provider, the carrier shall be responsible to pay to the provider the lesser of:

(A) The nonparticipating provider's bill charges;

(B) A negotiated rate; or

(C) In the absence of a negotiated rate, the greater of the carrier's average in-network rate for the relevant geographic area or the usual, customary, and reasonable rate for such geographic area. Nothing in this paragraph (c) shall require either a carrier or a nonparticipating provider to attempt to negotiate a reimbursement rate.

(II) Upon request the carrier shall disclose to the covered person or the nonparticipating provider whether the amount reimbursed to the nonparticipating provider was the nonparticipating provider's billed charges, a negotiated rate, or the greater of the carrier's average in-network rate for the relevant geographic area or the usual, customary, and reasonable rate for such geographic area.

(III) A nonparticipating provider may balance bill the covered person in the event that the reimbursement rate described in subparagraph (I) of this paragraph (c) is not equal to the billed charges.

(IV) The commissioner shall promulgate rules defining the relevant geographic area for the purposes of sub-subparagraph (C) of subparagraph (I) of this paragraph (c). In the promulgation of such rules, the commissioner shall group together counties with similar demographic and economic characteristics. Such characteristics shall include, but not be limited to, average per capita income, the cost of housing, general cost of living, poverty and unemployment levels, or the primary economic base of the county.

(d) The carrier shall provide, in conspicuous, bold-faced type, an understandable disclosure in policy contract materials, certificates of coverage for a policyholder, and marketing materials about the following:

- (I) Specific counties of the state where there are no participating providers;
- (II) The circumstances under which the covered person may be balanced billed by nonparticipating providers; and
- (III) The mechanisms to obtain the carrier's reimbursement rates to nonparticipating providers for specific covered health care services.

(e) (I) A carrier shall make available upon request from the covered person or the nonparticipating provider, from whom the covered person is seeking treatment, the carrier's usual, customary, and reasonable rate for reimbursement for specific health care services.

(II) The commissioner may, upon receipt of one or more complaints from a covered person or a covered person's nonparticipating treating provider, review the carrier's usual, customary, and reasonable rate to determine if the rate is established pursuant to an appropriate methodology that is based on generally accepted industry standards and practices.

(III) The carrier's methodology for determining usual, customary, and reasonable reimbursement rates shall be applied in a uniform manner statewide; except that geographic adjustments may be made apart from the standard methodology.

(f) For the purposes of this subsection (2):

(I) "Balance bill" means the amount that a nonparticipating provider may charge the covered person. Such amount charged equals the difference between the amount paid by the carrier and the amount of the nonparticipating provider's bill charge.

(II) "Negotiated rate" means the rate mutually agreed upon between the carrier and the provider in a specific instance.

(III) "Usual, customary, and reasonable rate" means a rate established pursuant to an appropriate methodology that is based on generally accepted industry standards and practices.

(g) A health maintenance organization offering health benefits in this state may:

(I) Offer health benefit coverage in accordance with paragraph (i) of this subsection (2) to a small employer that is not located, or whose employees do not work or reside, within the health maintenance organization's geographic service area;

(II) Offer health benefit coverage in accordance with paragraph (i) of this subsection (2) in a geographic area within the carrier's service area in which a health maintenance organization is unable to maintain an adequate network and is able to demonstrate to the commissioner upon request that the carrier has made unsuccessful good faith efforts to contract with local providers on reasonable terms; or

(III) A health maintenance organization that elects to offer coverage pursuant to this paragraph (g) shall offer such coverage within a geographic area consistent with the requirements of section 10-16-105 (7.3).

(h) The health maintenance organization shall provide a disclosure to a small employer and its employees who purchase health insurance coverage under the circumstance described in this paragraph (h). Such disclosure shall also be given in writing to all interested policyholders and certificate holders as part of the sales and marketing materials before the insurer or entity approves an application for insurance from an insured. The disclosure shall contain the following statement: "Interested policyholders, certificate holders, and enrollees are hereby given notice that this small group policy requires that an insured travel outside of the geographic area to receive covered health benefits." The carrier shall, in a conspicuous location on the policy contract materials, certificates of coverage for a policyholder, and marketing materials, provide the disclosure required by this paragraph (h) in bold-faced, twelve-point type and all capital letters.

(i) (I) A health maintenance organization that offers coverage pursuant to this section may require that a covered person travel a reasonable distance beyond the area specified under subsection (6) of this section in order to receive services from a participating provider. Except for emergency services and benefits available for out-of-network services, in such cases where the covered person is required to travel a reasonable distance to receive services from a participating provider and knowingly seeks services from a nonparticipating provider, the health maintenance organization shall be responsible to pay for the lesser of:

- (A) The provider's billed charges;
- (B) A negotiated rate; or



(C) In the absence of a negotiated rate, the greater of the health maintenance organization's average in-network rate for the relevant geographic area or the usual, customary, and reasonable rate for such geographic area.

(II) Upon request, the health maintenance organization shall disclose to the covered person or the nonparticipating provider whether the amount reimbursed to the nonparticipating provider was the nonparticipating provider's billed charges, a negotiated rate, or the greater of the carrier's average in-network rate for the relevant geographic area or the usual, customary, and reasonable rate for such geographic area.

(j) Nothing in paragraph (i) of this subsection (2) shall require either a carrier or a nonparticipating provider to attempt to negotiate a reimbursement rate.

(k) A nonparticipating provider may balance bill the covered person in the event that the reimbursement rate described in paragraph (i) of this subsection (2) is not equal to the provider's billed charges.

(l) The provisions of paragraph (i) of this subsection (2) shall not apply to cases in which the covered person is so severely ill or impaired that such person is unable to move from place to place without the aid of a mechanical device; has a physical or mental condition, verified by a physician licensed to practice medicine in this state or practicing medicine pursuant to section 12-36-106 (3) (i), C.R.S., that substantially limits the person's ability to move from place to place; or suffers from a physical hardship such that travel would threaten the safety or welfare of the covered person as verified by the covered person's in-network treating physician. Decisions in which a carrier contests the covered person's ability to travel may be appealed pursuant to section 10-16-113 or 10-16-113.5.

(m) Notwithstanding any other provision of law, on and after September 1, 2006, for the duration of the term of a policy in effect when the insured pays the amount charged for a covered health care service and seeks reimbursement from a carrier for such covered health care service, the insured shall be liable for no more than the in-network copayment, coinsurance, and deductible for such service if:

(I) The insured seeks reimbursement from the carrier within twelve months after the provision of the service;

(II) Preauthorization is not required for the particular type of service provided; and

(III) A contract between the provider and the carrier was in place when the service was provided.

(2.5) (a) In the event of a material change to the carrier's network that could result in the application of subparagraph (I) of paragraph (b) of subsection (2) of this section, the carrier shall provide at least forty-five days prior to the change, in conspicuous bold-faced type, an understandable disclosure to all affected covered persons about the following:

(I) Specific network changes in the geographic area;

(II) The circumstances under which the covered person may be balance billed by nonparticipating providers; and

(III) The mechanisms to obtain the carrier's reimbursement rates to a nonparticipating provider for specific covered health care services.

(b) In the event of a material change to the carrier's network that could result in the application of subparagraph (I) of paragraph (b) of subsection (2) of this section, the carrier shall provide notice of the change to the commissioner at least fifteen days prior to the change. Such notice may be provided by electronic means.

(c) In the event that a network of a managed care plan with out-of-network benefits that is not a health maintenance organization or a health maintenance organization with a point of service plan changes, and notice to covered persons is provided pursuant to section 10-16-705 (7), such notice shall include an understandable disclosure of:

(I) The circumstances under which the covered person may be balance billed by nonparticipating providers; and

(II) The mechanisms to obtain the carrier's reimbursement rate to nonparticipating providers for specific covered health care services.

(d) In the event that a contract with a participating provider terminates or is terminated, notification to covered persons shall be provided pursuant to section 10-16-705 (7).

(2.7) (a) Nothing in subsection (2) or (2.5) of this section shall delay access to health care services.

(b) Nothing in subparagraph (I) of paragraph (b) of subsection (2) of this section shall exempt a carrier from having a participating provider for all covered benefits. In any case where the carrier has no participating providers to provide a covered benefit, the provisions of paragraph (a) of subsection (2) of this section shall apply.

(3) (a) (I) In 1997, the general assembly enacted this part 7 with the express intent to incorporate consumer protections into the creation and maintenance of provider networks and to establish standards to assure the adequacy, accessibility, and quality of health care services offered under a managed care plan.

(II) The general assembly hereby finds, determines, and declares that there are situations in which insured consumers receive health care services, including procedures approved by their insurance carrier, in a network facility, with a primary provider that is a network provider, but in which other health care professionals assisting with such procedures may not be in-network providers. In such situations, the consumer is not aware that the assisting providers are out-of-network providers. Further, the consumer may have little or no direct contact with the assisting health care professionals. The division of insurance has interpreted the network adequacy provisions in this section, along with the provisions related to relationships between an insurer and a health care provider in section 10-16-705, to hold the consumer harmless for additional charges from out-of-network providers for care rendered in a network facility. The division of insurance's interpretation of these statutes was challenged by an insurer and invalidated by a division of the Colorado court of appeals in *Pacific Life & Annuity Co. v. Colorado Div. of Ins.*, no. 04CA2169 (slip op.) (Feb. 23, 2006).

(III) The general assembly finds, determines, and declares that the division of insurance has correctly interpreted the provisions of this section to protect the insured from the additional expense charged by an assisting provider who is an out-of-network provider, and has properly required insurers to hold the consumer harmless. The division of insurance does not have regulatory authority over all health plans. Some consumers are enrolled in self-funded health insurance programs that are governed under the federal "Employee Retirement Income Security Act". Therefore, the general assembly encourages health care facilities, carriers, and providers to provide consumers disclosure about the potential impact of receiving services from an out-of-network provider.

(IV) The general assembly finds, determines, and declares that some consumers intentionally use out-of-network providers, which is the consumers' prerogative under certain health benefit plans. When consumers intentionally use an out-of-network provider, the consumer is only entitled to benefits at the out-of-network rate and may be subject to balance billing by the out-of-network provider.

(V) Therefore, the general assembly finds, determines, and declares that the purpose of Senate Bill 06-213 is to codify the interpretation of the division of insurance that holds consumers harmless for charges over and above the in-network rates for services rendered in a network facility.

(b) When a covered person receives services or treatment in accordance with plan provisions at a network facility, the benefit level for all covered services and treatment received through the facility shall be the in-network benefit. Covered services or treatment rendered at a network facility, including covered ancillary services or treatment rendered by an out-of-network provider performing the services or treatment at a network facility, shall be covered at no greater cost to the covered person than if the services or treatment were obtained from an in-network provider.

(c) Repealed.

(4) When a treatment or procedure has been preauthorized by the plan, benefits cannot be retrospectively denied except for fraud and abuse. If a health carrier provides preauthorization for treatment or procedures that are not covered benefits under the plan, the carrier shall provide the benefits as authorized with no penalty to the covered person.

(4.5) (a) All claims paid by a carrier shall be considered final unless adjustments are made pursuant to this subsection (4.5).

(b) Except as otherwise provided in this subsection (4.5), adjustments to claims by the provider or the carrier shall be made within the time period set out in a contract between the provider and the carrier. Such time period shall be the same for the provider and the



carrier and shall not exceed twelve months after the date of the original explanation of benefits.

(c) Except as otherwise provided in this subsection (4.5), if there is no contract between a provider and a carrier, adjustments to claims paid to providers shall be made within twelve months after the date of the original explanation of benefits. The time period for adjustments shall be the same for the provider and the carrier.

(d) (I) Adjustments to claims paid under a risk assumption or risk sharing agreement shall be made within six months after the last date of service for a period for which a settlement is being reconciled. The period for which a settlement is reconciled shall not exceed twelve months.

(II) For purposes of this paragraph (d), "risk assumption" and "risk sharing" refer to a transaction whereby the chance of loss, including the expenses for the delivery of service, with respect to the health care of a person is transferred to or shared with another entity in return for full consideration. Such transactions include, but are not limited to, full or partial capitation agreements, withholds, risk corridors, and indemnification agreements. Such transactions do not include fee-for-service arrangements, per diem payments, and diagnostic-related group payment agreements.

(e) Adjustments to claims related to coordination of benefits with federally funded health benefit plans, including medicare and medicaid, shall be made within thirty-six months after the date of service.

(f) A carrier shall not retroactively adjust a claim based on eligibility if the provider received verification of eligibility within two business days prior to the delivery of services.

(g) (I) (A) In circumstances where a carrier determines that a premium has not been received during a grace period required by section 10-16-202 (4) for an individual policy, the carrier may report to the provider that eligibility is contingent on payment of the premium due and that eligibility cannot be confirmed for the period that the premium is outstanding. In such cases, a carrier shall comply with the requirements of section 10-16-705 (12) (b) and (12) (c).

(B) If a carrier fails to report to the provider that eligibility is contingent on payment of premium due pursuant to sub-subparagraph (A) of this subparagraph (I), the carrier shall comply with paragraph (f) of this section.

(II) In circumstances where the provider receives information from the carrier that coverage is contingent upon receipt of a premium, the requirements of section 10-16-705 (3) shall not apply and the provider may collect payment for services from the enrollee.

(III) If the provider has collected payment from the enrollee and subsequently receives payment from the carrier, the provider shall reimburse the enrollee less any applicable copayments, deductibles, or coinsurance amounts.

(h) In circumstances where a carrier determines that a premium has not been received during a grace period required by section 10-16-214 (3) for a group policy, the carrier may report to the provider that the carrier is not required to pay for health care services rendered to an enrollee during a time in which the carrier can demonstrate that the policyholder has secured coverage with another carrier.

(i) Nothing in this subsection (4.5) shall prohibit the carrier from requiring the enrollee to reimburse the carrier for claims paid by the carrier to the provider if:

(I) A change in eligibility status has occurred making the enrollee ineligible for coverage on the date services were provided; or

(II) An enrollee has committed fraud or material misrepresentation in applying for coverage or in receiving or filing for benefits.

(j) A carrier shall not retroactively adjust a claim based on eligibility if the provision of benefits is a required policy provision pursuant to section 10-16-202 (4) or section 10-16-214 (3).

(k) Nothing in this subsection (4.5) shall be construed to require a grace period for the payment of premiums to a health maintenance organization.

(l) (I) Any adjustment made by the carrier that recovers carrier overpayments to a provider shall include a written notice to the provider and shall contain a complete and specific explanation of such adjustments and information regarding the carrier's provider dispute resolution procedures pursuant to section 10-16-705 (13). Such notice shall be made

to both the provider and the enrollee to the extent that the adjustment will result in enrollee liability. Notice to the enrollee required by this paragraph (I) shall include information regarding the carrier's enrollee appeals procedure rather than the carrier's provider dispute resolution procedures.

(II) (A) For claims adjusted by the carrier due to coordination of benefits, in addition to the requirements of this paragraph (I), upon request of the provider, the carrier shall provide all available information regarding the party responsible for payment of the claim to the provider.

(B) The carrier shall provide notice to the provider with the explanation of benefits regarding the availability of the information related to the party responsible for payment of the claim.

(m) Adjustments to claims made in cases where a carrier, pursuant to section 10-1-128 (5) (a) (IV), has reported fraud or abuse committed by the provider, shall not be subject to the requirements of this subsection (4.5).

(5) A managed care plan shall not deny benefits for emergency services previously rendered, based upon the covered person's failure to provide subsequent notification in accordance with plan provisions, where the covered person's medical condition prevented timely notification.

(6) The carrier shall establish and maintain adequate arrangements to ensure reasonable proximity of participating providers to covered persons and shall only market a network plan in a geographic area where network providers are accessible without unreasonable delay. In determining whether a health carrier has complied with this subsection (6), consideration shall be given to the relative availability of health care providers in the service area under consideration.

(7) A carrier shall monitor, on an ongoing basis, the capacity and legal authority of the participating providers and facilities with which it contracts to furnish all covered benefits to covered persons.

(8) No managed care plan shall deny or restrict in-network covered benefits to a covered person solely because the covered person obtained treatment outside the network. This protection shall be disclosed in writing to the covered person. Nothing in this subsection (8) shall be construed to require a managed care plan to pay for any benefit obtained outside the plan's network unless the contract or certificate provides for that out-of-network benefit.

(9) Beginning January 1, 1998, a carrier shall maintain and make available upon request of the commissioner, the executive director of the department of public health and environment, or the executive director of the department of health care policy and financing, in a manner and form that reflects the requirements specified in paragraphs (a) to (k) of this subsection (9), an access plan for each managed care network that the carrier offers in this state. The carrier shall make the access plans, absent confidential information as specified in section 24-72-204 (3), C.R.S., available on its business premises and shall provide them to any interested party upon request. In addition, all health benefit plans and marketing materials shall clearly disclose the existence and availability of the access plan. All rights and responsibilities of the covered person under the health benefit plan, however, shall be included in the contract provisions, regardless of whether or not such provisions are also specified in the access plan. The carrier shall prepare an access plan prior to offering a new managed care network and shall update an existing access plan whenever the carrier makes any material change to an existing managed care network, but not less than annually. The access plan of a carrier offering a managed care plan shall demonstrate the following:

(a) An adequate number of accessible acute care hospital services, within a reasonable distance or travel time, or both;

(a.3) An adequate number of accessible primary care providers within a reasonable distance or travel time, or both;

(a.5) An adequate number of accessible specialists and sub-specialists within a reasonable distance or travel time, or both, or who may be available through the use of telemedicine;

(a.7) Geographic accessibility, which in some circumstances may require the crossing of county or state lines;



(a.9) If the covered person has a pharmacy benefit, an adequate number of pharmacy providers within a reasonable distance, travel time, delivery time, or all three. Nothing in this paragraph (a.9) shall preclude the use of a retail or mail-order pharmacy provider.

(b) A carrier offering a managed care plan shall maintain procedures for making referrals within and outside its network that, at a minimum, must include the following:

(I) A comprehensive listing, made available to covered persons and primary care providers, of the plan's network participating providers and facilities;

(II) (A) A provision that referral options cannot be restricted to less than all providers in the network that are qualified to provide covered specialty services; except that a health maintenance organization may offer variable deductibles and copayments to encourage the selection of certain providers.

(B) A health maintenance organization that offers variable deductibles and copayments shall provide adequate and clear disclosure, as required by law, of variable deductibles and copayments to enrollees, and the amount of any deductible or copayment shall be reflected on the benefit card provided to the enrollees.

(III) Timely referrals for access to specialty care;

(IV) A process for expediting the referral process when indicated by medical condition; and

(V) (A) A provision that referrals approved by the plan cannot be retrospectively denied except for fraud or abuse;

(B) A provision that referrals approved by the plan cannot be changed after the preauthorization is provided unless there is evidence of fraud or abuse.

(c) The carrier's process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in managed care plans;

(d) The carrier's quality assurance standards, adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of care;

(e) The carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(f) The carrier's methods for determining the health care needs of covered persons, tracking and assessing clinical outcomes from network services, and evaluating consumer satisfaction with services provided;

(g) The carrier's method for informing covered persons of the plan's services and features, including but not limited to the following:

(I) The plan's grievance procedures, which shall be in conformance with division rules concerning prompt investigation of health claims involving utilization review and grievance procedures;

(II) The extent to which specialty medical services, including physical therapy, occupational therapy, and rehabilitation services are available;

(III) The plan's process for choosing and changing network providers; and

(IV) The plan's procedures for providing and approving emergency and medical care;

(h) The carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty providers;

(i) The carrier's process for enabling covered persons to change primary care professionals;

(j) The carrier's proposed plan for providing continuity of care in the event of contract termination between the carrier and any of its participating providers or in the event of the carrier's insolvency or other inability to continue operations. The description shall explain how covered persons will be notified of the contract termination or the carrier's insolvency or other cessation of operations and transferred to other providers in a timely manner.

(k) Any other information required by the commissioner to determine compliance with the provisions of this part 7.

(10) (a) In determining the reasonableness of travel time and distances for the purposes of this section, consideration shall be given to differences in travel times for rural areas as opposed to urban areas, the relative availability of health care providers, the location where

the majority of people in the area access nonemergency services, and the managed care plan's good faith efforts to contract with local providers at reasonable rates.

(b) The commissioner, upon the commissioner's authority or upon review of one or more complaints, may require the carrier to demonstrate the adequacy of the network's plan as specified in subsection (9) of this section.

(c) The commissioner may utilize the remedies outlined in section 10-3-1108 for failing to provide proper disclosures to covered persons pursuant to subsection (2) or (2.5) of this section.

(11) The division of insurance, in cooperation with the chief medical officer for the state, shall evaluate a carrier's network adequacy plan concerning the use of telemedicine for providers who are specialists and sub-specialists for rural areas. Such review shall occur in a timely fashion so as not to delay access to health care services.

**Source:** **L. 97:** Entire part added, p. 1325, § 2, effective July 1. **L. 2001:** (1), (2), IP(9), (9)(a), IP(9)(b), and (9)(b)(V) amended and (2.5), (2.7), (9)(a.3), (9)(a.5), (9)(a.7), (9)(a.9), (10), and (11) added, pp. 1154, 1158, §§ 4, 5, effective January 1, 2002. **L. 2002:** (1)(c), (9)(a.7), and (9)(b)(II) amended and (2)(g) to (2)(l) added, pp. 1296, 1297, §§ 12, 13, effective January 1, 2003; (4.5) added, p. 884, § 1, effective January 1, 2003. **L. 2003:** (4.5)(m) amended, p. 618, § 20, effective July 1. **L. 2006:** (3) amended, p. 1566, § 1, effective June 2; (2)(m) added, p. 588, § 1, effective September 1. **L. 2010:** (3)(c) repealed, (SB 10-183), ch. 308, p. 1452, § 1, effective May 27.

**Cross references:** For the legislative declaration contained in the 2001 act amending subsections (1), (2), IP(9), (9)(a), IP(9)(b), and (9)(b)(V) and enacting subsections (2.5), (2.7), (9)(a.3), (9)(a.5), (9)(a.7), (9)(a.9), (10), and (11), see section 1 of chapter 300, Session Laws of Colorado 2001.

#### ANNOTATION

**When an insured receives care or treatment from a nonparticipating provider at an in-network facility,** there is no negotiated rate, and the nonparticipating provider is under no contractual obligation to charge a rate other than his or her normal rate, and the insurer is mandated to pay to an insured only in-network ben-

efits. The insurer is not required to pay the nonparticipating provider's bill balance to shield the insured from making a payment above what it would make to a participating provider. *Pac. Life & Annuity Co. v. Colo. Div. of Ins.*, 140 P.3d 181 (Colo. App. 2006).

**10-16-705. Requirements for carriers and participating providers.** (1) In addition to any other applicable requirements of this part 7, a carrier offering a managed care plan shall satisfy all the requirements of this section.

(2) A carrier shall maintain a mechanism by which providers can access information on the covered health services for which the provider is responsible, including any limitations or conditions on services.

(3) Every contract between a carrier and a participating provider shall set forth a hold harmless provision specifying that covered persons shall, in no circumstances, be liable for money owed to participating providers by the plan and that in no event shall a participating provider collect or attempt to collect from a covered person any money owed to the provider by the carrier. Nothing in this section shall prohibit a participating provider from collecting coinsurance, deductibles, or copayments as specifically provided in the covered person's contract with the managed care plan.

(4) (a) Every contract between a carrier and a participating provider shall include provisions for continuity of care as specified in this subsection (4).

(b) Each managed care plan shall allow covered persons to continue receiving care for sixty days from the date a participating provider is terminated by the plan without cause when proper notice as specified in subsection (7) of this section has not been provided to the covered person.

(c) In the circumstance that coverage is terminated for any reason other than nonpayment of the premium, fraud, or abuse, every managed care plan shall provide for continued care for covered persons being treated at an in-patient facility until the patient is discharged.



(5) (a) Except as provided for in paragraph (b) of this subsection (5), notwithstanding any contractual provision to the contrary, a carrier that has entered into contracts with one or more contractors or subcontractors or their intermediaries to provide covered health care services to covered persons of the carrier under any managed care plan shall, in the event of nonpayment by, or insolvency of, such contractors or subcontractors or their intermediaries, remain responsible for the payment of all participating providers that have provided covered health care services to covered persons of the carrier pursuant to one or more contracts with such contractors or subcontractors or their intermediaries. Any contracting provider that provides covered health care services to covered persons of the carrier under a managed care contract shall, in the event of nonpayment for such services, have legal standing to enforce the managed care contract against the carrier and receive payment for such services. In the event of the insolvency of a carrier, participating provider claims for unpaid services shall be a class 6 claim under section 10-3-541 (1) (f).

(b) A carrier may apply to the commissioner for the use of an alternative mechanism to ensure that all participating providers that have provided covered health care services to covered persons of the carrier pursuant to one or more contracts with such contractors or subcontractors or their intermediaries receive payment due. If approval is granted, said carrier shall be exempt from the requirements of paragraph (a) of this subsection (5).

(6) A carrier shall notify participating providers of the providers' responsibilities with respect to the carrier's applicable administrative policies and programs, including but not limited to, payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements, and any applicable federal or state programs.

(6.5) A carrier that has entered into a contract with one or more intermediaries to conduct utilization management, utilization review, provider credentialing, administration of health insurance benefits, setting or negotiation of reimbursement rates, payment to providers, network development, or disease management programs shall require the intermediary to comply with the same standards, guidelines, medical policies, and benefit terms of the carrier.

(7) A carrier and participating provider shall provide at least sixty days written notice to each other before terminating the contract without cause. The carrier shall make a good faith effort to provide written notice of termination within fifteen working days after receipt of or issuance of a notice of termination to all covered persons that are patients seen on a regular basis by the provider whose contract is terminating, regardless of whether the termination was for cause or without cause. Where a contract termination involves a primary care provider, all covered persons that are patients of that primary care provider shall also be notified. Within five working days after the date that the provider either gives or receives notice of termination, the provider shall supply the carrier with a list of those patients of the provider that are covered by a plan of the carrier.

(8) The rights and responsibilities under a contract between a carrier and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the carrier, and any subcontracts shall comply with the requirements of this part 7.

(9) A carrier's contract with participating providers shall include a provision that participating providers do not discriminate, with respect to the provision of medically necessary covered benefits, against covered persons that are participants in a publicly financed program.

(9.5) If the health benefit plan provides coverage for a second opinion, the carrier and any entity that contracts with the carrier shall disclose the availability of the second opinion along with the health benefit description form.

(10) A carrier shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, copayments, or deductibles from covered persons pursuant to the evidence of coverage or of the providers' obligations, if any, to notify covered persons of their personal financial obligations for noncovered services.

(10.5) (a) A carrier that has entered into a contract with one or more intermediaries to conduct utilization management, utilization review, provider credentialing, administration of health insurance benefits, setting or negotiation of reimbursement rates, payment to providers, network development, or disease management programs, shall require the

intermediary to indicate the name of the intermediary and the name of the carrier for which it is conducting the work when making any payment to a health care provider on behalf of the carrier.

(b) (I) A violation of subsection (6.5) of this section or this subsection (10.5) is an unfair or deceptive act or practice in the business of insurance pursuant to section 10-3-1104.

(II) The commissioner may examine the actions of a carrier pursuant to subsection (6.5) of this section and this subsection (10.5) when conducting a market conduct analysis pursuant to part 2 of article 1 of this title.

(11) A carrier shall not penalize a provider because the participating provider, in good faith, reports to state or federal authorities any act or practice by the carrier that jeopardizes patient health or welfare, or because the participating provider discusses the financial incentives or financial arrangements between the provider and the managed care plan.

(11.5) A carrier or entity that contracts with the carrier shall not penalize a primary care provider who makes a standing referral of a covered person to a specialist, nor shall the specialist treating the covered person be penalized, with actions that include but are not limited to disincentives or disaffiliation, except for violations of section 10-1-128.

(12) (a) A carrier shall establish one or more mechanisms by which the participating providers may determine, at the time services are provided, whether or not a person is covered by the carrier. If a carrier maintains only one mechanism, such mechanism shall not require electronic access.

(b) (I) Each carrier, regardless of the mechanism used, shall issue a verification code that the participating provider may use as proof of verification as required by section 10-16-704 (4.5) (f).

(II) In lieu of the requirements of this paragraph (b), for the purposes of verifying the carrier's communication to the provider pursuant to section 10-16-704 (4.5) (g) or (4.5) (h), a carrier may submit written confirmation to a provider within two business days.

(III) If a carrier provides electronic access as a mechanism to verify coverage, the carrier may, in lieu of the requirement to issue a verification code through such mechanism, accept as proof of verification a dated screen print from the carrier's electronic verification mechanism demonstrating that the member is eligible pursuant to section 10-16-704 (4.5) (g) or that the carrier is not required to pay for services pursuant to section 10-16-704 (4.5) (h).

(c) In lieu of the requirements of paragraph (b) of this subsection (12), a carrier may institute a policy providing that adjustments to claims related to eligibility will be made only if the carrier can demonstrate that the member did not appear as eligible on any of the carrier's verification mechanisms on the date of service.

(d) A carrier shall notify participating providers of the mechanisms available to verify eligibility and the carrier's intent with respect to the requirements of paragraphs (a), (b), and (c) of this subsection (12).

(13) A carrier shall establish procedures for resolution of administrative, payment, or other disputes between providers and the carrier.

(14) Every contract between a carrier or entity that contracts with a carrier and a participating provider for a managed care plan that requires preauthorization for particular services, treatments, or procedures shall include:

(a) A provision that clearly states that the sole responsibility for obtaining any necessary preauthorization rests with the participating provider that recommends or orders said services, treatments, or procedures, not with the covered person; and

(b) A provision that allows a covered person to receive a standing referral, as defined in section 10-16-102 (43.5), for medically necessary treatment, to a specialist or specialized treatment center participating in the carrier's network or participating in a subdivision or subgrouping of the carrier's network if the subdivision or subgrouping demonstrates network adequacy pursuant to section 10-16-704. The primary care provider for the covered person, in consultation with the specialist and covered person, shall determine that the covered person needs ongoing care from the specialist in order to make the standing referral. A time period for the standing referral of up to one year, or a longer period of time if authorized by the carrier or any entity that contracts with the carrier, shall be determined



by the primary care provider in consultation with the specialist or specialized treatment center. The specialist or specialized treatment center shall refer the covered person back to the primary care provider for primary care. To be reimbursed by the carrier or entity contracting with a carrier, treatment provided by the specialist shall be for a covered person and must comply with provisions contained in the covered person's certificate or policy. The primary care physician shall record the reason, diagnosis, or treatment plan necessitating the standing referral.

(15) A contract between a carrier and a participating provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in the managed care plan or this part 7.

(16) A provider who is not licensed to furnish health care services in this state and who participates in a network shall be licensed in the state in which the provider practices and shall meet minimum statutory and regulatory standards for that professional practice applicable in this state.

**Source:** **L. 97:** Entire part added, p. 1328, § 2, effective July 1. **L. 99:** (9.5) and (11.5) added and (14) amended, p. 318, § 2, effective July 1. **L. 2002:** (12) amended, p. 886, § 2, effective January 1, 2003; (16) added, p. 1299, § 14, effective January 1, 2003. **L. 2003:** (11.5) and (12)(b)(I) amended, p. 618, § 21, effective July 1. **L. 2009:** (6.5) and (10.5) added, (HB 09-1061), ch. 197, p. 885, § 1, effective August 5.

**Cross references:** For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 111, Session Laws of Colorado 1999.

#### ANNOTATION

**Subsection (7) of this section and § 10-16-121 are expressions of the intent of the general assembly that termination clauses should be permitted in contracts between doctors**

**and health care providers.** Grossman v. Columbine Medical Group, Inc., 12 P.3d 269 (Colo. App. 1999).

**10-16-706. Intermediaries.** (1) In addition to any other applicable requirements of this part 7, a contract between a carrier and an intermediary shall satisfy all the requirements of this section.

(2) Intermediaries and participating providers with whom they contract shall comply with all the applicable requirements of section 10-16-705.

(3) The responsibility to ensure that participating providers have the capacity and legal authority to furnish covered benefits shall be retained by the carrier.

(4) A carrier shall have the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the carrier's covered persons.

(5) A carrier shall maintain copies of all intermediary health care subcontracts.

(6) If applicable, an intermediary shall transmit utilization documentation and claims paid documentation to the carrier. The carrier shall monitor the timeliness and appropriateness of payments made to participating providers and health care services received by covered persons.

(7) If applicable, an intermediary shall maintain books, records, financial information, and documentation of services provided to covered persons at the intermediary's place of business in this state.

(8) An intermediary shall allow the commissioner access to the intermediary's books, records, financial information, and any documentation of services provided to covered persons as necessary to determine compliance with this part 7.

(9) A carrier shall have the right, in the event of the intermediary's insolvency, to require the assignment to the carrier of the provisions of a participating provider's contract addressing the provider's obligation to furnish covered services.

**Source:** **L. 97:** Entire part added, p. 1331, § 2, effective July 1.

**10-16-707. Enforcement.** (1) If it is determined that a carrier has not contracted with enough participating providers to assure that covered persons have accessible health care services in a geographic area, that a carrier's access plan does not assure reasonable access to covered benefits, that a carrier has entered into a contract that does not comply with this part 7, or that a carrier has not complied with a provision of this part 7, the commissioner may institute a corrective action that shall be followed by the carrier or may use any of the commissioner's other enforcement powers to obtain the carrier's compliance with this part 7.

(2) The commissioner shall not act to arbitrate, mediate, or settle disputes between a managed care plan and a provider concerning a provider's inclusion or termination from the network.

(3) Failure of a provider to comply with the requirements of section 10-16-705 (16) shall preclude a carrier from contracting with a provider.

**Source:** L. 97: Entire part added, p. 1332, § 2, effective July 1. L. 2002: (3) added, p. 1299, § 15, effective January 1, 2003.

**10-16-708. Rule-making authority of commissioner.** The commissioner may promulgate rules as necessary for carrying out the commissioner's duties under this part 7.

**Source:** L. 97: Entire part added, p. 1332, § 2, effective July 1.

**10-16-709. Evaluation - nonparticipating health care providers - legislative declaration - rules.** (1) (a) The general assembly hereby finds and determines that not all health care providers contract with all health insurers and therefore not all are participating providers. Health care providers who do not contract with a carrier are considered to be nonparticipating providers as to that carrier. In addition, not all health care providers are aware of the terms of health insurance coverage for health care services provided to a consumer insured through individual or group health care coverage. Therefore, the general assembly determines that there is a need to inform insured consumers of the scope of health insurance coverage available to the consumer for the services of nonparticipating providers who render services in a participating facility and the extent of an insured consumer's responsibility when services are rendered to an insured by a nonparticipating provider.

(b) The general assembly hereby declares that it is in the best interest of the residents of this state to provide administrative direction to health insurance carriers, health care providers, and health facilities to provide timely notice to a consumer concerning when the person may or may not incur additional charges for covered health benefits received from health care providers.

(2) The insurance commissioner shall, in collaboration with the division of professions and occupations within the department of regulatory agencies, the department of public health and environment, any other state agency, and any interested party, hold public hearings to determine the extent and source of the problem of a consumer being billed for an amount not paid by his or her health insurance as a result of a nonparticipating provider delivering health care services in a participating facility. These hearings shall also include an evaluation of the following:

- (a) Payments to nonparticipating providers in participating facilities;
- (b) Methods to improve disclosure to consumers of individual and group health insurance;
- (c) When a person may be responsible for amounts in excess of the person's covered benefits from a nonparticipating provider;
- (d) What the carrier's responsibilities are for payment for health benefits covered under the person's health benefit plan; and
- (e) The appropriate appeals process for insurers and health care providers to settle disputes.

(3) The insurance commissioner, the department of public health and environment, and the division of professions and occupations, including, but not limited to, any **type 1** board



under the supervision of the division of professions and occupations, may promulgate rules in accordance with the findings from the evaluation conducted pursuant to subsection (2) of this section.

(4) On or before February 1, 2005, the insurance commissioner shall report the findings of the evaluation pursuant to subsection (2) of this section to the business affairs and labor committees of the house of representatives and the senate. The insurance commissioner shall include in the report a description of the rules promulgated pursuant to subsection (3) of this section. If a state agency did not promulgate rules pursuant to subsection (3) of this section, that state agency shall submit to the insurance commissioner, for inclusion in the commissioner's report to the business affairs and labor committees of the house of representatives and senate, the reasons why rules were not promulgated pursuant to subsection (3) of this section.

**Source: L. 2004:** Entire section added, p. 965, § 4, effective May 21.

## PART 8

### TASK FORCE TO EVALUATE HEALTH CARE NEEDS FOR COLORADO

#### 10-16-801. (Repealed)

**Source: L. 2003:** Entire part repealed, p. 1785, § 17, effective July 1.

**Editor's note:** This part 8 was added in 2001 and was not amended prior to its repeal in 2003. For the text of this part 8 prior to 2003, consult the 2002 Colorado Revised Statutes.

## PART 9

### MULTIPLE EMPLOYER WELFARE ARRANGEMENT PILOT PROGRAM

#### 10-16-901 to 10-16-910. (Repealed)

**Editor's note:** (1) This part 9 was added in 2003. For amendments to this part 9 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 10-16-910 (1) provided for the repeal of this part 9, effective July 1, 2008. (See L. 2003, p. 1779.)

## PART 10

### HEALTH CARE COVERAGE COOPERATIVES

**Cross references:** For provisions relating to health care coverage cooperatives prior to 2004, see article 18 of title 6 as contained in Colorado Revised Statutes 2003.

**Law reviews:** For article, "H.B. 94-1193: Health Care Purchasing Reform", see 23 Colo. Law. 2763 (1994).

**10-16-1001. Legislative declaration.** (1) The general assembly hereby recognizes that, through the sunset review for the division of insurance within the department of regulatory agencies in October 2001, the general assembly adopted a recommendation to consolidate and relocate the regulatory functions concerning health care cooperatives. The provisions of parts 1, 2, and 4 of article 18 of title 6, C.R.S., were, therefore, repealed and relocated to this part 10.

(2) The general assembly hereby finds that:

(a) Under the current health care system in this state, individuals risk losing their health care coverage when they move, when they lose or change jobs, when they become seriously ill, or when coverage becomes unaffordable;

(b) Continued escalation of health care costs threatens the continued economic vitality of the state; and

(c) Health care is a critical part of the economy of this state, representing a significant percentage of public and private spending, and affects all industries and individuals in this state.

(3) The general assembly hereby determines that:

(a) Comprehensive health care benefits that meet the full range of health needs, including primary, preventive, and specialized care, should be readily available to citizens of this state;

(b) The current high quality of health care in this state should be maintained;

(c) Employers and their employees in this state should be afforded a meaningful opportunity to choose from a range of health plans, health care providers, and treatments;

(d) Competition in the health care industry should ensure that health plans and health care providers are efficient and charge reasonable prices;

(e) All individuals should have a responsibility to pay their fair share of the costs of health care coverage; and

(f) Colorado's health care system should build on the strength of the employment-based coverage arrangements that now exist in this state.

(4) The general assembly, therefore, declares that the purposes of this part 10 are to:

(a) Promote control of the cost of health care for employers, employees, and others who pay for health care coverage by pooling purchasing power among consumers and organizing providers so that health care services are delivered in the most efficient manner;

(b) Allow health care cooperatives established under this part 10 flexibility in the determination of plans and coverages they provide to members and the selection of health provider networks, plans, and providers with which they contract for services;

(c) Promote individual choice among health plans and health care providers;

(d) Ensure high quality health care; and

(e) Encourage all individuals to take responsibility for their health care coverage by building on existing employment-based arrangements for health care benefits.

(5) The general assembly hereby finds, determines, and declares that the rapidly changing health care market provides unique opportunities for health care providers to organize themselves into new forms of collaborative systems to deliver high quality health care at competitive market prices to cooperatives and other purchasers. This part 10 is enacted to encourage such collaborative arrangements and to promote market-based competition among health care providers.

(6) The general assembly further recognizes that, in order to achieve the most effective use of resources and medical technology to respond to changing market conditions, providers who would otherwise be competitors with each other will need to horizontally integrate in order to develop collaborative arrangements to guarantee an adequate number of providers to service the market and to vertically integrate in order to guarantee that those who receive services will have a continuum of care as appropriate to their care needs.

(7) The general assembly also recognizes that to effect such new forms of collaborative systems and integration of providers to service the market will require an analysis of:

(a) Existing methods of providing services, contracting, collaborating, and networking among providers; and

(b) The extent and type of regulatory oversight of licensed provider networks or licensed individual providers that is appropriate to protect the public.

**Source: L. 2004:** Entire part added, p. 992, § 14, effective August 4.

**10-16-1002. Definitions.** As used in this part 10, unless the context otherwise requires:

(1) "Class of business" means all or a distinct grouping of small employers as shown on the records of a small carrier. Each class shall reflect substantial differences in administrative costs related to the use of health care cooperatives for the marketing and sale of health benefit plans to small employers.

(2) "Cooperative" or "health care coverage cooperative" means a health care coverage cooperative created pursuant to this part 10 as an entity that provides to its members health



coverage and health care purchasing services, including but not limited to detailed information on comparative prices, usage, outcomes, quality, and member satisfaction with provider networks. "Cooperative" does not include a cooperative association organized without capital stock in accordance with article 55 of title 7, C.R.S., that is subject to articles 121 to 137 of title 7, C.R.S., and that had filed articles of incorporation with the secretary of state on or before March 15, 1991.

(3) "Health information" has the same meaning as "medical information", as set forth in section 18-4-412 (2) (b), C.R.S. "Health information" also includes information that relates to the past, present, or future physical or mental health of the member and its eligible employees and to payment for the provision of health care to the member and its eligible employees.

(4) "Licensed provider network" shall have the same meaning as in section 6-18-301.5 (1), C.R.S.

(5) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to, and to control, payment for health care services. For example, and not for the purpose of limitation, managed care techniques most often include one or more of the following: Prior, concurrent, and retrospective review of the medical necessity and appropriateness of services or of the site at which services are provided; contracts with selected health care providers; financial incentives or disincentives related to the use of specific providers, services, or service sites; controlled access to and coordination of services by a case manager; and payor efforts to identify treatment alternatives and modify benefit restrictions for high-cost patient care. "Managed care" also includes but is not limited to health maintenance organizations, as defined in section 10-16-102 (23).

(6) (a) "Member" means any public or private employer that has employees covered for health benefits through a cooperative.

(b) If, pursuant to section 10-16-1009 (3) (I), a cooperative provides coverage to individuals and allows individuals to join the cooperative, "member" may also include an individual and any dependent of such individual who is covered by a plan purchased through a cooperative, is eighteen years of age or older, and is not:

(I) Eligible for other coverage with benefits substantially similar to those included in the basic and standard health benefit plans; and

(II) A dependent of an individual who is eligible for other coverage with benefits substantially similar to those included in the basic and standard health benefit plans that cover that individual.

(7) "Person with financial interest in the cooperative's business" means one of the following or an immediate family member of one of the following:

(a) A health care provider who is contracting or attempting to contract, directly or indirectly, with the cooperative;

(b) An individual who is an employee or member of the board of directors of, has a substantial ownership interest in, or derives substantial income from an entity or person that is contracting or attempting to contract, directly or indirectly, with the cooperative; or

(c) An employee of an association, law firm, or other institution or organization that represents the interests of one or more entities or persons that are contracting or attempting to contract, directly or indirectly, with the cooperative.

(8) "Provider network" means a group of health care providers formed to provide health care services to individuals.

(9) "Purchaser" means an individual, an organization, or a governmental entity that makes health benefit purchasing decisions on behalf of a group of individuals.

(10) "Utilization management" means programs designed to assure appropriate utilization of health services relative to established standards or norms.

(11) "Waivered health care coverage cooperative" means a cooperative that has been approved to receive a waiver from the commissioner pursuant to section 10-16-1011.

**Source: L. 2004:** Entire part added, p. 993, § 14, effective August 4.

**10-16-1003. Privacy of health information.** (1) The privacy of individually identifiable health information collected for or by a cooperative shall be protected. Disclosure of such information is prohibited except for:

(a) Disclosures by an individual identified in the information or whose identity can be associated with the information;

(b) Disclosures explicitly authorized through written informed consent procedures by an individual;

(c) Disclosures to federal, state, or local law enforcement agencies for lawful purposes;

(d) Subject to rules promulgated by the commissioner, disclosures for bona fide research projects.

(2) (a) All disclosures of individually identifiable health information shall be restricted to the minimum amount of information necessary to accomplish the purpose for which the information is being disclosed.

(b) Any cooperative shall implement administrative, technical, and physical safeguards for the security of identifiable health information.

(3) (a) Subject to appropriate procedures established by a cooperative, an individual has the right to know whether any individual or entity uses or maintains individually identifiable health information concerning the individual and for what purpose the information may be used or maintained.

(b) Subject to appropriate procedures established by a cooperative, an individual has the right, with respect to identifiable health information concerning the individual that is recorded in any form or medium, to:

(I) See such information;

(II) Copy such information; and

(III) Have a notation made with or in such information including suggestions for amendments or corrections to such information requested by the individual or the individual's representative.

(4) Provider networks and providers in a network shall maintain the confidentiality of medical records as otherwise required by section 18-4-412, C.R.S., or other applicable law.

**Source: L. 2004:** Entire part added, p. 995, § 14, effective August 4.

#### **10-16-1004. Health care coverage cooperatives - establishment - fees.**

(1) (a) There is hereby authorized the creation of entities to be known as health care coverage cooperatives. A health care coverage cooperative may be created as any lawful entity under articles 55, 56, 58, 101 to 117, or 121 to 137 of title 7, C.R.S., so long as such entity operates for the mutual benefit of its members. Entities created pursuant to this part 10, in addition to the matters otherwise required, are subject to this part 10.

(b) Each cooperative shall follow the organizational requirements and corporate governance requirements of its statutory incorporation and, in addition, shall provide internal procedures that comply with section 10-16-1009.

(2) (a) (I) A cooperative organized on or after August 4, 2004, for the purposes of securing health care coverage for its members and their eligible employees shall file articles of organization with the secretary of state and shall provide a copy of such articles to the commissioner in such form as the secretary and the commissioner may require consistent with this part 10 and title 7, C.R.S.

(II) For cooperatives formed prior to August 4, 2004, the executive director of the department of health care policy and financing shall provide the commissioner with such cooperatives' articles of organization.

(b) Any person or entity operating or holding itself out as a cooperative shall apply for and obtain a certificate of authority to operate as a cooperative pursuant to sections 10-16-1005 and 10-16-1006.

(c) No individual or entity that organizes a cooperative may become or attempt to become a person with financial interest in the cooperative's business for a period of three years after organization of the cooperative.

(3) (a) A cooperative is organized when the articles of organization are filed with the secretary of state or, if a delayed effective date is specified in the articles as filed with the secretary of state and a certificate of withdrawal is not filed, on such delayed effective date. The existence of the cooperative begins upon organization; except that no cooperative shall



secure health care coverage for its members until a certificate of authority has been issued by the commissioner pursuant to section 10-16-1005 (1).

(b) Except in a proceeding by the state to cancel or revoke the organization of, or involuntarily dissolve, the cooperative, the secretary of state's filing of the articles of organization shall be conclusive and irrefutable proof that all conditions precedent to organization have been met.

(4) Each cooperative shall file a report pursuant to section 7-136-107, C.R.S., and pay the required fee, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., in lieu of all franchise or corporation license taxes.

(5) Except as allowed by section 10-16-1014, the division of insurance shall not participate in the formation or administration of a health care coverage cooperative created pursuant to this part 10.

**Source: L. 2004:** Entire part added, p. 996, § 14, effective August 4. **L. 2011:** (1)(a) amended, (SB 11-191), ch. 197, p. 820, § 4, effective April 2, 2012.

#### ANNOTATION

**Law reviews.** For article, "Physician-Controlled Network Joint Ventures: Antitrust Considerations", see 24 Colo. Law. 1551 (1995).

**10-16-1005. Issuance of certificate of authority by commissioner for cooperative to purchase health care coverage.** (1) (a) (I) (A) On and after August 4, 2004, an unlicensed cooperative conducting business pursuant to this part 10 shall file an application with the commissioner for issuance of a certificate of authority to purchase health care coverage for members and their eligible employees. An application shall include the following information: The name of the cooperative and any agent for service of process; details concerning provisions to govern the business and affairs of the cooperative, including management and organizational structure; an affidavit signed under oath by an officer of the organization that the cooperative is in compliance with sections 10-16-1004 (2) (c) and 10-16-1008 (3); and the names of managing personnel of the cooperative. The commissioner shall grant a certificate of authority to an applicant under this section unless the application fails to comply with this part 10. The commissioner shall establish an application filing fee, not to exceed one thousand one hundred dollars, to recover the direct costs of the commissioner in conducting the review required by this section. Each cooperative issued a certificate of authority pursuant to this section shall annually submit such information as the commissioner may reasonably require to determine that a cooperative continues to be in compliance with the provisions of this part 10. The commissioner shall establish a fee, not to exceed one thousand one hundred dollars annually, to recover the direct costs of the commissioner in determining annually that a cooperative is in compliance with the provisions of this part 10.

(B) Except as provided in section 10-16-1004 (3) (b), no cooperative shall take any action enumerated in section 10-16-1009 unless a certificate of authority has been issued pursuant to this section by the commissioner. Any person or entity applying to obtain a certificate of authority as required by section 10-16-1004 (2) (b) that fails to obtain a certificate of authority by December 1, 2004, shall cease to engage in any activity for which a certificate of authority is required pursuant to this part 10 until a certificate of authority is issued by the commissioner pursuant to this section and section 10-16-1006.

(C) Cooperatives that have been issued a certificate of authority by the executive director of the department of health care policy and financing prior to August 4, 2004, shall submit proof of such certificate of authority to the commissioner prior to November 1, 2004. The commissioner shall reissue a certificate of authority to the cooperative on or before December 1, 2004.

(II) A cooperative shall be required to post a fidelity or employee dishonesty bond or deposit with the commissioner a certificate of deposit or securities in a minimum amount equal to at least two months' premiums held by the cooperative or its administrator as of

its annual renewal date in order to be granted a certificate of authority under this section. If a cooperative contracts with an outside administrator for all premium-handling functions, the cooperative itself will not be required to post a bond in order to comply with the provisions of this subparagraph (II) so long as the cooperative submits to the commissioner evidence that such administrator has obtained a bond in the required amount.

(b) The commissioner may grant a temporary certificate of authority to any cooperative. Any such temporary certificate of authority shall be valid for a period of one year after the date of issuance.

(c) Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., an application, together with any supporting material and responses from the commissioner, shall not be considered a public record until the commissioner approves the application or until an organizer requests a hearing on the commissioner's denial of the application.

(2) The commissioner shall respond in writing to each application for a certificate of authority within thirty days after receipt by the commissioner. The commissioner shall either approve the application or shall inform the organizers of specific changes to the application that the commissioner deems necessary for approval under this part 10. Each applicant shall respond to the commissioner's comments within thirty days after receipt. The commissioner shall either approve the application within thirty days after receipt of such changes or request additional changes to the application. The time limits contained in this subsection (2) shall apply to all phases of the application process except hearings conducted pursuant to article 4 of title 24, C.R.S.

**Source: L. 2004:** Entire part added, p. 997, § 14, effective August 4.

**10-16-1006. Authority to deny application for, revoke, or suspend certificate of authority.** (1) On and after August 4, 2004, the commissioner may deny an application for a certificate of authority pursuant to section 10-16-1005 or revoke or suspend a certificate of authority of any cooperative found to be in violation of this part 10.

(2) (a) Any party may request a hearing pursuant to article 4 of title 24, C.R.S., on any action of the commissioner denying an application for a certificate of authority or revoking or suspending a certificate of authority.

(b) Any hearing conducted under this section shall be conducted pursuant to article 4 of title 24, C.R.S., and section 10-1-127, and the commissioner may use the services of an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(c) Any final decision of the commissioner under this part 10 shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

**Source: L. 2004:** Entire part added, p. 999, § 14, effective August 4.

**10-16-1007. Prohibition on cooperatives transacting insurance business.** A cooperative shall not perform any activity included in the definition of transacting insurance business in this state, as provided in section 10-3-903, except as otherwise authorized in the powers, duties, and responsibilities of cooperatives as set forth in section 10-16-1009. A cooperative shall not establish or engage in the activities of a health maintenance organization, as defined in section 10-16-102 (23).

**Source: L. 2004:** Entire part added, p. 999, § 14, effective August 4.

**10-16-1008. Administrative structure of cooperatives - board of directors - officers - employees.** (1) The affairs of the cooperative shall be managed in accordance with the legal structure required of the entity and governed by persons elected by the members from their own number. The governing body of the cooperative shall adopt bylaws and rules for the cooperative. Members of a cooperative shall be entitled to equal participation and benefit from the cooperative; except that a cooperative at its option may extend voting rights to eligible employees. The governing body of the cooperative shall meet at such times and places as it determines necessary to operate the cooperative in accordance with this part 10.



(2) A cooperative may provide fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee.

(3) An individual who is a member of a governing body of a cooperative may not be a person with financial interest in the cooperative's business during his or her term on the governing body or during the twelve-month period immediately before or after service on such governing body.

(4) The bylaws may provide that no member of the governing body of a cooperative shall occupy any position in the cooperative except the chief executive officer and secretary on regular salary or substantially full-time pay. The bylaws may provide for an executive committee and may allot to the executive committee all the functions and powers of the board of directors, subject to general direction and control by the board.

(5) When a vacancy occurs on the governing body of a cooperative other than by expiration of a member's term, the remaining members of the governing body shall fill the vacancy by majority vote.

(6) The governing body of a cooperative may appoint a chief executive officer of the cooperative and other staff necessary to administer the cooperative. The chief executive officer and other staff serve at the pleasure of the governing body.

(7) No cooperative may assume any liability for payment for health care services covered by a plan purchased through the cooperative.

**Source: L. 2004:** Entire part added, p. 999, § 14, effective August 4.

**10-16-1009. Powers, duties, and responsibilities of cooperatives.** (1) Each cooperative organized pursuant to this part 10 shall:

- (a) Establish the conditions of cooperative membership;
- (b) Provide to cooperative members and their eligible employees clear, standardized information about each provider network, licensed provider network, carrier, or other provider contracted with by the cooperative, including, but not limited to, information on price, benefits, costs, quality, patient satisfaction, membership, and responsibilities and obligations;
- (c) Offer dependent coverage;
- (d) Except for groups over fifty, offer to all members and their eligible employees the standard and basic health benefit plans;
- (e) Obtain the necessary contact information and resources to provide to members and their eligible employees the information described in paragraph (b) of this subsection (1);
- (f) Contract only for insurance functions listed in section 10-3-903, with entities authorized to do business in this state by the commissioner pursuant to this title that have:
  - (I) The capacity to administer the health benefit plan or services to be offered;
  - (II) The ability to monitor and evaluate the quality and cost-effectiveness of care and applicable procedures;
  - (III) The ability to report quality and outcomes information necessary for the cooperative to report quality information to members and their eligible employees; and
  - (IV) The ability to assure members and their eligible employees adequate access to health care providers, including an adequate number and type of providers for the risk pool involved;
- (g) Develop and implement a marketing plan that will widely publicize the cooperative to potential members and their eligible employees and develop and implement methods for informing the public about the cooperative and its services;
- (h) State clearly all administrative and broker or agent fees associated with membership in all materials published for the purpose of soliciting members and their eligible employees or that may be used by potential members in deciding whether to join the cooperative;
- (i) Establish administrative and accounting procedures for the operation of the cooperative and members' services, prepare an annual cooperative budget, and prepare annual program and fiscal reports on cooperative operations;
- (j) Maintain all records, reports, and other information of the cooperative;

(k) Maintain a trust account or accounts for the deposit of premium moneys collected pursuant to paragraph (d) of subsection (3) of this section, to be paid to carriers or licensed provider networks or licensed individual providers for coverage offered through the cooperative. A cooperative shall have a fiduciary duty with respect to premium moneys collected for carriers and licensed provider networks offered through the cooperative.

(l) Annually report on operations of the cooperative, including program and financial operations, and provide for internal and independent audits;

(m) Disclose to members and potential members whether or not the cooperative has been granted a temporary certificate of authority pursuant to section 10-16-1005 (1) (b);

(n) Offer the same premiums and any negotiated health care prices to all member classes, if any, equally; except that a cooperative may offer different premiums or negotiated health care prices to members who are not small employers.

(2) Members that are not self-insured may only be offered plans or services offered by licensed provider networks, licensed individual providers, and other carriers. For purposes of this part 10, "self-insured" means not insured under a plan underwritten by a carrier or licensed provider network. A self-insured employer or individual may join a cooperative in order to have access to the discounted provider rates (excluding capitated agreements) that the cooperative may negotiate on behalf of its self-insured members.

(3) Each cooperative organized pursuant to this part 10 may:

(a) Determine, from time to time, the need to establish classes of membership;

(b) Set reasonable fees for membership in the cooperative that will finance all reasonable and necessary costs incurred in administering the cooperative;

(c) Offer any and all health benefit packages permitted under law in addition to the standard and basic health benefit plans;

(d) Require, as a condition of membership, that all employers include all their employees or a minimum percentage of employees in coverage purchased through the cooperative. The cooperative may establish minimum percentages that differ according to the benefit plan or carrier offered. The cooperative may require an employer making membership application to a cooperative that would entail entering fewer than one hundred percent of such employer's eligible employees or dependents to demonstrate, under standards consistent with paragraph (g) of subsection (4) of this section, that such membership is not likely to result in an adverse selection group being brought into the cooperative and would not otherwise act as a form of risk selection or risk avoidance.

(e) Subject to paragraph (l) of subsection (1) of this section, provide premium collection services for plans and licensed provider networks or licensed individual providers offered through the cooperative;

(f) Reject, or allow a carrier to reject, an employer from membership or drop, or allow a carrier to drop, an employer from membership if the employer or any of its employee members fails to pay premiums or engages in fraud or material misrepresentation in connection with a plan purchased through the cooperative. If an employer or employee is dropped from membership, the employee shall be entitled to continuation and conversion coverage as provided under applicable state or federal continuation laws and the state conversion law.

(g) Contract with qualified independent third parties for any service necessary to carry out the powers and duties authorized or required by this part 10;

(h) Contract with licensed insurance agents or brokers to market coverage made available through the cooperative to its members. A cooperative shall use a uniform fee schedule for all agents and brokers. Such fee schedule shall not vary based on the actual or expected health status or medical utilization of the group to which coverage is sold.

(i) Exclude any carrier, provider network, or provider or freeze enrollment in any carrier, provider network, or provider for failure to achieve established quality, access, or information reporting standards of the cooperative;

(j) Prohibit members who drop coverage through the cooperative from reenrolling for up to twelve months in coverage purchased through the cooperative;

(k) Require that members and their eligible employees continue to pay administrative fees that are part of the contract with the cooperative if a member or eligible employee cancels prior to completion of a contract period;



(l) Offer coverage for individuals who are members. If coverage is offered to individuals as members, the cooperative may require that individuals include all dependents under such coverage.

(m) Establish employer contribution requirements. Such requirements may differ by benefit plan, benefit package, or carrier.

(4) No cooperative organized pursuant to this part 10 may:

(a) Exclude from membership in the cooperative any small employer or eligible employee or dependent of a small employer who agrees to pay fees for membership and any premium for coverage through the cooperative and who abides by the bylaws and rules of the cooperative and satisfies the requirements of the benefit plan selected;

(b) Differentiate classes of membership on the basis of industry type, race, religion, gender, education, health status, or income;

(c) Commit any act constituting a rebate prohibited by section 10-3-1104 (1) (g). The commissioner shall enforce this paragraph (c) pursuant to part 11 of article 3 of this title.

(d) Prohibit any hospital, health maintenance organization, or other provider, as a condition of contracting to provide services through the cooperative, from providing services through a subcontract or subcontracts with any other hospital, health maintenance organization, or other provider meeting the cooperative's quality standards;

(e) Charge any fee not directly related to health care or the administration of health care purchasing functions;

(f) As a condition of membership, require any member, eligible employee, or dependent to subscribe to non-health-care-related products or services;

(g) Knowingly operate the cooperative or market the cooperative in a county or primary metropolitan statistical area in a way that would cause the cooperative to select a risk pool with actuarially projected health care utilization over a two-year period that is below the projected average for all individuals residing in that county or primary metropolitan statistical area. Such measurement and comparison of projected utilization by members of the cooperative to all individuals shall be done on a county or primary metropolitan statistical area basis and not across all members of the cooperative.

(h) Knowingly authorize or select any carrier, provider, licensed provider network, licensed individual provider, or individual provider that does not comply with or conform to the applicable requirements or standards of this title.

**Source: L. 2004:** Entire part added, p. 1000, § 14, effective August 4.

**10-16-1010. Marketing requirements of cooperatives.** (1) A cooperative shall use appropriate, efficient, and standardized means to notify members and prospective members and their eligible employees of the availability of sponsored health care coverage from the cooperative.

(2) A cooperative shall make available to members and prospective members and their eligible employees marketing materials that accurately summarize the health benefit plans that are offered by its licensed provider networks, licensed individual providers, and other carriers, and rates, costs, and accreditation information relating to those plans. A cooperative shall also summarize the services offered by all other provider networks and individual providers the cooperative offers, the rates for those services, and accreditation information relating to those provider networks.

(3) A cooperative may offer nonlicensed provider networks or individual providers only to self-insured members of the cooperative. Nonlicensed provider networks or individual providers may also be offered to members not self-insured if the services offered do not involve transacting insurance business, as defined in section 10-3-903. The members may choose which health benefit plans shall be offered to eligible employees and may change the selection each year. The employee may be given options with regard to health benefit plans and the type of managed care system under which benefits will be provided.

**Source: L. 2004:** Entire part added, p. 1004, § 14, effective August 4.

**10-16-1011. Requirements for waived health care coverage cooperatives - rules.**

(1) The commissioner shall promulgate rules setting forth the application procedure for cooperatives seeking a waiver under this section that:

(a) Establish fair, effective, and timely procedures for addressing consumer, contractor, and health plan grievances. Such rules shall include, without limitation, a requirement that health plans provide the cooperative written notification of all grievances filed with the health plans and at least a quarterly summary of such grievances. This paragraph (a) shall not be construed to exempt participating carriers from any requirements of this title concerning grievance procedures.

(b) Require the cooperative to demonstrate that it provides coverage in every geographic area in which its participating carriers are authorized to do business by the division of insurance;

(c) Establish that small employers that purchase fully insured products through the cooperative are not permitted to offer their employees comparable fully insured or self-insured products through any means other than the cooperative;

(d) Ensure that the cooperative will at all times comply with the provisions of section 10-16-1009 (4) (g);

(e) Require the cooperative to offer, at a minimum, the basic and standard benefit plans for employers with fifty or fewer employees that all participating carriers must offer. Other benefit plans and benefit packages may be established and offered by some or all carriers that contract with the cooperative, and such plans or packages may include a range of cost-sharing levels. Benefit packages may also include some variations for differences in delivery systems, such as health maintenance organizations, point-of-service plans, preferred provider plans, and fee-for-service plans.

(2) A waiver shall be in effect for a period of not less than ten years after the date of issue, unless the commissioner determines that the waived cooperative is in violation of subsection (1) of this section. In such a case, the waiver may be phased out over a period of three years by the commissioner in a manner that is consistent with the market viability of the cooperative.

(3) The commissioner may grant a permanent waiver effective upon expiration of a ten-year period. If at any time the commissioner determines that a waived cooperative operating under a permanent waiver is in violation of subsection (1) of this section, the permanent waiver may be phased out by the commissioner over a period of three years in a manner that is consistent with the market viability of the cooperative.

(4) The commissioner shall promulgate rules for annual reporting requirements for waived cooperatives. Reporting requirements shall be based only on the requirements for obtaining a waiver as outlined under subsection (1) of this section. Such reporting requirements shall be integrated with other reporting requirements for cooperatives operating under this part 10.

(5) (a) (I) Any carrier doing business with a waived cooperative shall comply with all rules regarding underwriting, claims handling, sales, solicitation, and other applicable requirements specified pursuant to this title.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), if a waived cooperative requires its participating small employer carriers to offer a standardized health benefit plan that such carriers do not offer outside of the waived cooperative, such carriers shall not be required to market that standardized plan either inside or outside the waived cooperative in those areas of the state that are not part of the waived cooperative's geographic service area.

(b) (I) Any carrier doing business with a waived cooperative shall comply with all applicable rules regarding rating specified pursuant to this title.

(II) (A) Notwithstanding subparagraph (I) of this paragraph (b) and subject to the provisions of sub-subparagraph (B) of this subparagraph (II), a waived cooperative and a participating carrier may negotiate a percentage discount off of what would otherwise be allowable rates under sections 10-16-105 (8) (a) and 10-16-1012 for a particular plan. That percentage discount shall be applied uniformly to all small employer members of the cooperative. Pursuant to section 10-16-1012, a carrier may apply rating factors differently for its business with a waived cooperative than for the carrier's other business. Partici-



pating carriers shall notify the division of insurance of a negotiated cooperative discount at least thirty days prior to use.

(B) A waived cooperative may negotiate the non-health-care expense component of the premium rates charged with participating health care coverage plans. As used in this sub-subparagraph (B), "non-health-care expense" includes but is not limited to marketing expenses, acquisition expenses, cost of paying claims, commissions, maintenance expenses, other administration costs, profits, and other contingency margins. "Non-health-care expense" does not include fees paid to health care providers for health care services regardless of the methodology of reimbursement or payment.

(C) Participating health care coverage plans, including those plans that are under consideration for participation, shall, upon request, disclose to waived cooperatives a list and description of all relevant public information regarding all expenses of the health plans, including but not limited to: The plan's recent filings and previously required filings with the Colorado division of insurance; filings with the national association of insurance commissioners (NAIC); health employer data information set (HEDIS) reports regarding provider compensation; and federal health care financing administration and federal office of personnel management filings relevant to provider compensation. Public information shall be provided upon request to a cooperative within fifteen days after such request.

(D) All health care plans participating in a cooperative shall sign an affidavit declaring that all coinsurance paid by the insured participants of the employer members of a waived cooperative shall be based on the health plan's contracted rate within the health plan's provider network.

(6) If the commissioner does not act on an application for a waiver under this section within sixty days after submission of the application, the cooperative may request a formal hearing with the commissioner.

**Source: L. 2004:** Entire part added, p. 1004, § 14, effective August 4.

**10-16-1012. Application of rating factors inside a waived cooperative.** With the prior approval of the commissioner, a waived cooperative may require all participating carriers to apply allowable rate adjustment factors and case characteristic factors to all of that waived cooperative's business in a consistent fashion, as determined by the cooperative. If a waived cooperative has received such approval, a participating carrier within that cooperative shall not be required to apply allowable rate adjustment factors and case characteristic factors in the same way for its waived cooperative business as for its other business.

**Source: L. 2004:** Entire part added, p. 1007, § 14, effective August 4.

**10-16-1013. Violations of article by persons involved with operations of cooperatives - enforcement - penalties.** (1) As used in this section, unless the context otherwise requires, "responsible party" means a member of the governing body or an executive officer of a cooperative.

(2) (a) After notice and the opportunity for a hearing pursuant to article 4 of title 24, C.R.S., the commissioner may enforce the provisions of this part 10 by issuing orders directed to any responsible party, including but not limited to cease-and-desist orders, as are deemed necessary if the commissioner finds that:

(I) Such person has violated this part 10 or any lawful rule promulgated pursuant to this part 10, engaged in any unsafe or unsound practice in connection with a cooperative, engaged in an act, omission, or practice that constitutes a breach of fiduciary duty to a cooperative, or has been found liable for or guilty of a civil or criminal offense affecting such person's qualification to serve in such capacity; or

(II) (A) The cooperative has suffered or appears likely to suffer substantial financial loss or that the interests of its members and eligible employees could be seriously prejudiced by reason of such violation, practice, breach of fiduciary duty, or offense;

(B) Such person has received financial gain from such violation, practice, breach of fiduciary duty, or offense; or

(C) Such violation involves serious dishonesty or demonstrates a willful or continuing disregard for the safety or soundness of the cooperative.

(b) In addition to the actions authorized in paragraph (a) of this subsection (2), the commissioner may impose a civil penalty of up to twenty-five thousand dollars for each violation.

(c) In addition to the penalty provided in paragraph (b) of this subsection (2), if the commissioner determines that any person is in violation of the provisions of section 10-16-1004 (2) (c) or 10-16-1008 (3), the commissioner may order the responsible party suspended or removed from office.

(d) If the commissioner finds that extraordinary circumstances exist that require immediate action, such action may be taken immediately pursuant to section 24-4-105 (12), C.R.S., but a subsequent hearing shall promptly be afforded upon application to rescind the action taken.

(e) The commissioner may initiate informal actions to enforce this part 10 under this section. Such informal actions may include written agreements with, informal commitment letters from, or the forwarding of a letter of reprimand to, a cooperative or responsible party.

(3) Any person adversely affected by an order issued pursuant to this section may, within twenty days after the date of the order, request judicial review under section 24-4-106 (11), C.R.S. An action for judicial review shall not operate to stay or vacate a decision or order; except that the court may issue a stay pending review. The commissioner may recover reasonable attorney fees incurred to enforce the order.

**Source: L. 2004:** Entire part added, p. 1007, § 14, effective August 4.

**10-16-1014. Technical assistance to authorized cooperatives from division of insurance.** (1) Subject to available appropriations, the commissioner may provide technical assistance to any cooperative that:

(a) Makes coverage available to employer members and covered individuals statewide to the extent possible;

(b) Requires that employer members not self-insure for any benefits included in the cooperative's basic or standard health benefit plans;

(c) Sets maximum employer member contributions to any plan for a covered individual at an amount not to exceed one hundred percent of the cost of the lowest-priced coverage for that employee's family composition for any particular plan package, with employee members paying the difference between the premium of the selected plan and the employer contribution;

(d) Establishes rules that specify that employer members shall take no action to limit their employees' choice of plans offered through the cooperative or to encourage or discourage employees from making particular choices of plans offered through the cooperative;

(e) Contracts with as many carriers as is allowed by the market and the cooperative's quality, access, and information reporting requirements;

(f) Develops and implements a marketing plan to publicize the cooperative to potential members and develops and implements methods for informing the public about the cooperative and its services;

(g) Develops specific plans to expand health care coverage and to expand access to health care in this state; and

(h) Gives each covered individual the opportunity to choose among carriers that contract with the cooperative.

**Source: L. 2004:** Entire part added, p. 1008, § 14, effective August 4.

**10-16-1015. Health care cooperatives - rule-making authority.** The commissioner may promulgate rules consistent with this part 10 for purposes of carrying out the



commissioner's duties under this part 10. The commissioner may promulgate rules to carry out the commissioner's duties under section 10-16-1005, so long as such rules impose no additional requirements beyond those specifically enumerated in section 10-16-1005.

**Source: L. 2004:** Entire part added, p. 1009, § 14, effective August 4.

## **ARTICLE 16.5**

### **Prepaid Dental Care Plans**

#### **10-16.5-101 to 10-16.5-116. (Repealed)**

**Source: L. 92:** Entire article repealed, p. 1728, § 22, effective July 1.

**Editor's note:** This article was added in 1979. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to parts 1 and 5 of article 16 of this title. For the location of specific provisions, see the editor's notes following each section in said parts 1 and 5 and the comparative tables located in the back of the index.

## **HEALTH MAINTENANCE ORGANIZATIONS**

### **ARTICLE 17**

#### **Health Maintenance Organizations**

#### **10-17-101 to 10-17-140. (Repealed)**

**Source: L. 92:** Entire article repealed, p. 1728, § 22, effective July 1.

**Editor's note:** This article was numbered as article 37 of chapter 72 in C.R.S. 1963. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to parts 1 and 4 of article 16 of this title. For the location of specific provisions, see the editor's notes following each section in said parts 1 and 4 and the comparative tables located in the back of the index.

## **MEDICARE SUPPLEMENT INSURANCE**

### **ARTICLE 18**

#### **Medicare Supplement Insurance**

**Editor's note:** This article was added in 1981. This article was repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

10-18-101. Definitions.  
10-18-102. Applicability and scope.

10-18-103.

Standards for policy provisions - guarantee issue.

10-18-104.	Minimum standards for benefits and claims payment.	10-18-107.	ance with federal law. Right to examine policy - right to refund of premium.
10-18-105.	Loss ratio standards and filing requirements.	10-18-108.	Advertising - copy provided to commissioner.
10-18-106.	Disclosure standards - regulations necessary for compli-	10-18-109.	Penalties.

**10-18-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Applicant" means:

(a) In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; or

(b) In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means any certificate issued under a group medicare supplement policy, which certificate has been delivered or issued for delivery in this state.

(3) "Medicare" means the "Health Insurance for the Aged Act", Title XVIII of the federal "Social Security Act", as amended by the social security amendments of 1965, and as later amended.

(4) "Medicare supplement policy" means a group or individual policy of sickness and accident insurance or a subscriber contract of a nonprofit hospital and health service corporation or a health maintenance organization, which policy or contract is primarily advertised, marketed, or designed as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare.

**Source:** L. 89: Entire article R&RE, p. 498, § 1, effective July 1. L. 92: (4) amended, p. 1500, § 34, effective July 1.

**Editor's note:** This section is similar to former § 10-18-101 as it existed prior to 1989.

**10-18-102. Applicability and scope.** (1) Except as otherwise specifically provided, this article shall apply to:

(a) All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after July 1, 1989; and

(b) All certificates issued under group medicare supplement policies or subscriber contracts, which certificates have been delivered or issued for delivery in this state on or after July 1, 1989.

(2) The provisions of this article shall not apply to a policy or contract for employees, former employees, or any combination of employees or former employees or to a policy or contract for members, former members, or any combination of members and former members of labor organizations, which policy or contract is established by one or more employers or labor organizations or the trustees of a fund established by one or more employers or labor organizations or any combination of such employers, labor organizations, or trustees.

(3) The provisions of this article shall not apply to insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, which policies are not marketed as or held out to be medicare supplement policies or benefit plans.

**Source:** L. 89: Entire article R&RE, p. 499, § 1, effective July 1.

**10-18-103. Standards for policy provisions - guarantee issue.** (1) No medicare supplement insurance policy, contract, or certificate in force in this state shall contain benefits that duplicate benefits provided by medicare.

(2) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with all applicable laws under this title. No requirement of this title relating to minimum required policy benefits, other than the minimum standards



contained in this article, shall apply to medicare supplement policies. The standards shall include, but need not be limited to:

- (a) Terms of renewability which shall provide that the policy cannot be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health or of age;
- (b) Initial and subsequent conditions of eligibility, which shall include the guaranteed issue requirements in subsection (5) of this section;
- (c) Nonduplication of coverage;
- (d) Preexisting conditions;
- (e) Benefit limitations, exceptions, and reductions which shall not include those which are more restrictive than those of medicare for any type of care covered under the policy;
- (f) Elimination, waiting, or probationary periods;
- (g) Recurrent conditions;
- (h) Definition of terms, including, but not limited to, accident, sickness, benefit period, hospital, nurse, physician, and skilled nursing facility;
- (i) Readability standards;
- (j) Continuing care coverage as required by section 10-16-413.5.

(3) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(4) Notwithstanding any other provision of law of this state to the contrary, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(5) The guaranteed issue period for a medicare supplement policy shall not be for less than six months after a previous policy has been involuntarily terminated for reasons other than nonpayment of premiums or for fraud or abuse.

**Source:** L. 89: Entire article R&RE, p. 499, § 1, effective July 1. L. 99: (2)(j) added, p. 1097, § 2, effective June 1. L. 2008: (2)(b) amended and (5) added, p. 1233, § 2, effective May 27.

**Editor's note:** This section is similar to former § 10-18-102 as it existed prior to 1989.

**10-18-104. Minimum standards for benefits and claims payment.** The commissioner shall issue reasonable regulations to establish minimum standards for benefits and payment of claims under medicare supplement policies.

**Source:** L. 89: Entire article R&RE, p. 500, § 1, effective July 1.

**Editor's note:** This section is similar to former § 10-18-103 as it existed prior to 1989.

**10-18-105. Loss ratio standards and filing requirements.** (1) Every insurer providing group or individual medicare supplement insurance benefits to a resident of this state pursuant to section 10-18-102 shall file a copy of the group master policy or individual policy and any certificate used in this state in accordance with the filing requirements and procedures of sections 10-16-107 (2) and (3) and 10-16-406; except that no insurer shall be required to make a filing earlier than thirty days after insurance was provided to a resident of this state under a group master policy issued for delivery outside this state.

(2) Group and individual medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service

rather than reimbursement basis and on the basis of earned premiums in accordance with accepted actuarial principles and practices. Every entity providing medicare supplement policies or certificates in this state shall file annually its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this state. All filings of rates and rating schedules shall demonstrate that the actual and expected losses in relation to premiums comply with the requirements of this article.

(3) No entity shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing policy if the existing policy had been replaced by another policy with the same company and the new policy benefits had been substantially similar to the benefits under the old policy and the old policy had been issued by the same insurer or insurer group.

**Source:** L. 89: Entire article R&RE, p. 500, § 1, effective July 1. L. 92: (1) amended, p. 1725, § 10, effective July 1.

**Editor's note:** This section is similar to former § 10-18-104 as it existed prior to 1989.

**10-18-106. Disclosure standards - regulations necessary for compliance with federal law.** (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no individual medicare supplement policy or certificate shall be delivered or issued for delivery in this state unless the outline of coverage as described in subsection (2) of this section is delivered to the applicant for such policy or such certificate at the time application is made.

(2) The commissioner shall prescribe by regulation the format and content of the outline of coverage required by subsection (1) of this section. As used in this subsection (2), "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

- (a) A description of the principal benefits and coverage provided in the policy;
- (b) A statement of the exceptions, reductions, and limitations contained in the policy;
- (c) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums;
- (d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.
- (e) (Deleted by amendment, L. 92, p. 1605, § 144, effective May 20, 1992.)

(3) The commissioner may further prescribe by regulation a standard form for and the contents of an informational brochure for persons eligible for medicare by reason of age, which brochure is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response medicare supplement insurance policies, the commissioner may require by regulation that the prescribed brochure must be provided upon request to any prospective insureds eligible for medicare by reason of age, but in no event later than the time of policy delivery.

(4) The commissioner may promulgate regulations for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages for all accident and sickness insurance policies sold to persons eligible for medicare by reason of age, which policies fail to meet the definition of a medicare supplement policy in section 10-18-101 (4).

(5) The commissioner may promulgate such regulations as are necessary to allow Colorado to meet the medicare supplement policy standards and requirements imposed by the federal "Health Insurance for the Aged Act" or otherwise required by any federal law or rule or regulation. This shall include the authority to promulgate as regulations the model standards adopted by the national association of insurance commissioners for the purpose of complying with any such federal requirements.



**Source:** **L. 89:** Entire article R&RE, p. 501, § 1, effective July 1. **L. 91:** (5) added, p. 1181, § 1, effective March 27. **L. 92:** (2)(e) and (3) amended, p. 1605, § 144, effective May 20.

**10-18-107. Right to examine policy - right to refund of premium.** Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days after its delivery and to have any premium refunded if, after examination of the policy or certificate, the policyholder or certificate holder is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the policyholder or certificate holder by the insurer in a timely manner. If a policyholder or certificate holder decides to cancel a policy or certificate after the first thirty days of coverage and the policyholder or certificate holder provides the insurer notice of the cancellation at least thirty days before cancellation, the insurer shall refund a prorated amount of any prepaid premiums for such policy or certificate based on the subsequent full months of coverage being cancelled.

**Source:** **L. 89:** Entire article R&RE, p. 502, § 1, effective July 1. **L. 2002:** Entire section amended, p. 305, § 1, effective January 1, 2003.

**Editor's note:** This section is similar to former § 10-18-107 as it existed prior to 1989.

**10-18-108. Advertising - copy provided to commissioner.** Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state that advertises medicare supplement insurance shall provide the commissioner a written copy of the medicare supplement advertisement used in this state. If there is a complaint filed about a radio or television advertisement, the commissioner may request an audio or video cassette from those entities.

**Source:** **L. 89:** Entire article R&RE, p. 502, § 1, effective July 1.

**10-18-109. Penalties.** In addition to any other applicable penalties for violations of this title, the commissioner may order insurers violating any provision of this article or regulations promulgated pursuant to this article to cease marketing any medicare supplement policy or certificate in this state, which policy or certificate is related directly or indirectly to a violation, may order such insurers to take such actions as are necessary to comply with the provisions of this article, or may make both such orders.

**Source:** **L. 89:** Entire article R&RE, p. 502, § 1, effective July 1.

## LONG-TERM CARE

### ARTICLE 19

#### Long-term Care Insurance

**Editor's note:** This article was added in 1986. This article was repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

10-19-101.	Short title.	10-19-104.	Scope and applicability of
10-19-102.	Legislative declaration.		article.
10-19-103.	Definitions.	10-19-105.	Extraterritorial jurisdiction -

	group long-term care insurance.	10-19-113.	Option for inflation adjustment - renewability.
10-19-106.	Rules on disclosure.	10-19-113.3.	Incontestability period.
10-19-107.	Performance standards.	10-19-113.4.	Nonforfeiture benefits - rules.
10-19-108.	Requirements for preexisting conditions.	10-19-113.5.	Requirement to offer basic and standard long-term care plans - advisory committee established. (Repealed)
10-19-109.	Requirements for prior hospitalization or institutionalization.	10-19-113.6.	Producer training requirements.
10-19-110.	Loss ratio standards.	10-19-113.7.	Rules.
10-19-111.	Right to return policy - free look.	10-19-114.	Compliance.
10-19-112.	Outline of coverage - certificate.	10-19-114.5.	Penalties.
		10-19-115.	Severability.

**10-19-101. Short title.** This article shall be known and may be cited as the "Long-term Care Insurance Act".

**Source: L. 90:** Entire article R&RE, p. 643, § 1, effective July 1.

**10-19-102. Legislative declaration.** The general assembly hereby declares that the purpose of this article is to promote the public interest and the availability of long-term care insurance policies, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

**Source: L. 90:** Entire article R&RE, p. 643, § 1, effective July 1.

**10-19-103. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Applicant" means:
  - (a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and
  - (b) In the case of a group long-term care insurance policy, the proposed certificate holder.
- (1.5) Repealed.
- (2) "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.
- (3) "Commissioner" means the commissioner of insurance.
- (4) "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to one of the following:
  - (a) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations;
  - (b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:
    - (I) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
    - (II) Has been maintained in good faith for purposes other than obtaining insurance;
  - (c) (I) An association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering such policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons and has been organized and maintained in good faith



for purposes other than that of obtaining insurance, has been in active existence for at least one year, and has a constitution and bylaws which provide that:

(A) The association holds regular meetings not less than annually to further purposes of the members;

(B) Except for credit unions, the association collects dues or solicits contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees.

(II) Thirty days after such filing, the association will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association does not satisfy those organizational requirements.

(d) A group other than as described in paragraph (a), (b), or (c) of this subsection (4), subject to a finding by the commissioner that:

(I) The issuance of the group policy is not contrary to the best interest of the public;

(II) The issuance of the group policy would result in economies of acquisition or administration; and

(III) The benefits are reasonable in relation to the premiums charged.

(5) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. The term shall also include qualified long-term care insurance contracts. This term does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. "Long-term care insurance" also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, and health service corporations, prepaid health plans, health maintenance organizations, or any similar organizations to the extent they are otherwise authorized to issue life or health insurance. "Long-term health care insurance" shall not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited-benefit health coverage. Notwithstanding any other provisions contained herein, any product advertised, marketed, or offered as long-term care insurance shall be subject to the provisions of this article.

(6) "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit hospital, medical-surgical, or health service corporation, prepaid health plan, health maintenance organization, or any similar organization.

(7) Repealed.

(8) (a) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance contract that meets the requirements of 26 U.S.C. sec. 7702B (b) of the federal "Internal Revenue Code of 1986", as amended, as follows:

(I) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this subparagraph (I) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(II) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the federal "Social Security Act", as added by the "Social Security Amendments of 1965", Pub.L. 89-97, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subparagraph (II) do not apply to expenses that are reimbursable under said Title XVIII only as a secondary payor. A contract shall not fail to satisfy the requirements of this subparagraph (II) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(III) The contract is guaranteed renewable, within the meaning of 26 U.S.C. sec. 7702B (b) (1) (C) of the federal "Internal Revenue Code of 1986", as amended;

(IV) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subparagraph (V) of this paragraph (a);

(V) All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits; except that a cash refund may be issued in the event of death of the insured or a complete surrender or cancellation of the contract, so long as the refund does not exceed the aggregate premiums paid under the contract;

(VI) The contract meets the consumer protection provisions set forth in 26 U.S.C. sec. 7702B (g) of the federal "Internal Revenue Code of 1986", as amended.

(b) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means the portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of 26 U.S.C. sec. 7702B (b) and (e) of the federal "Internal Revenue Code of 1986", as amended.

**Source:** L. 90: Entire article R&RE, p. 643, § 1, effective July 1. L. 95: (5) amended and (1.5) and (7) added, p. 922, § 20, effective May 25. L. 2005: (1.5) and (7) repealed, p. 405, § 1, effective August 8. L. 2007: (5) amended and (8) added, p. 196, § 1, effective January 1, 2008.

**Editor's note:** This section is similar to former § 10-19-101 as it existed prior to 1990.

**10-19-104. Scope and applicability of article.** The requirements of this article shall apply to policies delivered or issued for delivery in this state on or after July 1, 1990. This article is not intended to supersede the obligations of entities subject to this article to comply with the substance of other applicable insurance laws insofar as they do not conflict with this article; except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

**Source:** L. 90: Entire article R&RE, p. 645, § 1, effective July 1. L. 2007: Entire section amended, p. 198, § 2, effective January 1, 2008.

**10-19-105. Extraterritorial jurisdiction - group long-term care insurance.** A group long-term care insurance coverage shall not be offered to a resident of this state under a group policy issued in another state to a group described in section 10-19-103 (4) (d), unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that such requirements have been met.

**Source:** L. 90: Entire article R&RE, p. 645, § 1, effective July 1.

**10-19-106. Rules on disclosure.** The commissioner may adopt rules and regulations that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability,



initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. Such rules and regulations shall be in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**Source:** L. 90: Entire article R&RE, p. 645, § 1, effective July 1.

**10-19-107. Performance standards.** (1) A long-term care insurance policy may not:

(a) Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(b) Contain a provision establishing a new waiting period in the event that existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care; or

(d) Exclude coverage for Alzheimer's disease, senile dementia, other organic brain syndromes, or other types of senility diseases.

(2) A long-term care insurance policy shall:

(a) Offer the policyholder the opportunity to designate an individual who can be contacted in the event the policy is about to lapse. If the policyholder declines to designate someone, the carrier shall obtain a signed statement that the policyholder has been offered this opportunity and declined. The policyholder has the right to periodically update his or her authorized designee.

(b) Provide a ninety-day reinstatement period for policyholders who have allowed their policies to lapse due to nonpayment of premium, who have a cognitive impairment, and who have regularly paid the required premiums. The reinstated policy shall provide the same benefits, terms, and premiums as the lapsed policy.

**Source:** L. 90: Entire article R&RE, p. 646, § 1, effective July 1. L. 95: (2) added, p. 923, § 21, effective May 25. L. 2007: (1)(c) amended, p. 198, § 3, effective January 1, 2008.

**10-19-108. Requirements for preexisting conditions.** (1) A long-term care insurance policy or certificate, other than a policy or certificate thereunder, issued to a group as defined in section 10-19-103 (4) (a), shall not use a definition of "preexisting condition" that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

(2) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group as defined in section 10-19-103 (4) (a), shall not exclude coverage for a loss or confinement which is the result of a preexisting condition, unless such loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods set forth in subsections (1) and (2) of this section to specific age group categories or specific policy forms upon findings that the extension is in the best interest of the public.

(4) The definition of "preexisting condition" in subsection (1) of this section does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on the application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether

it is disclosed on the application, need not be covered until the waiting period described in subsection (2) of this section expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2) of this section.

**Source:** L. 90: Entire article R&RE, p. 646, § 1, effective July 1. L. 95: (1) amended, p. 923, § 22, effective May 25. L. 2007: (1), (2), and (4) amended, p. 198, § 4, effective January 1, 2008.

**10-19-109. Requirements for prior hospitalization or institutionalization.** (1) A long-term care insurance policy shall not be delivered or issued for delivery in this state if such policy:

(a) Conditions the eligibility for any benefits on a prior hospitalization requirement;

(b) Conditions the eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(c) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(2) (a) A long-term care insurance policy containing any limitations or conditions on eligibility for post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any required number of days of confinement.

(b) Effective July 1, 1991, a long-term care insurance policy containing a benefit advertised, marketed, or offered as a home health care or home care benefit shall not condition receipt of benefits on a prior institutionalization requirement.

(c) A long-term care insurance policy that conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.

(3) A long-term care insurance policy which provides benefits only following institutionalization shall not condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

**Source:** L. 90: Entire article R&RE, p. 647, § 1, effective July 1. L. 2007: (1), (2)(a), and (2)(c) amended, p. 199, § 5, effective January 1, 2008.

**10-19-110. Loss ratio standards.** The commissioner may adopt rules and regulations establishing loss-ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the regulation. Such rules and regulations shall be in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**Source:** L. 90: Entire article R&RE, p. 647, § 1, effective July 1.

**10-19-111. Right to return policy - free look.** A long-term care insurance applicant has the right to return the policy or certificate within thirty days after its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in section 10-19-103 (4) (a), the applicant is not satisfied for any reason. A long-term care insurance policy or certificate shall contain a notice, prominently printed on the first page or attached thereto, stating in substance that the applicant has the right to return the policy or certificate within thirty days after its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in



section 10-19-103 (4) (a), the applicant is not satisfied for any reason. This section shall also apply to a denial of application. Any refund shall be made within thirty days after the return or denial.

**Source:** L. 90: Entire article R&RE, p. 647, § 1, effective July 1. L. 2007: Entire section amended, p. 199, § 6, effective January 1, 2008.

**10-19-112. Outline of coverage - certificate.** (1) (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(b) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage.

(c) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(d) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(e) In the case of a policy issued to a group defined in section 10-19-103 (4) (a), an outline of coverage shall not be required to be delivered if the information described in subsection (2) of this section is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.

(2) The outline of coverage shall include all of the following:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described.

(d) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains the governing contractual provisions;

(e) A description of the terms under which the policy or certificate may be returned and premium refunded;

(f) A brief description of the relationship of cost of care and benefits;

(g) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under 26 U.S.C. sec. 7702B (b) of the federal "Internal Revenue Code of 1986", as amended.

(3) A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) A statement that the group master policy determines governing contractual provisions; and

(d) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described.

(4) (Deleted by amendment, L. 2007, p. 200, § 8, effective January 1, 2008.)

(5) Any policy or rider that is advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this article.

(6) If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty days after the date of approval.

(7) (a) Prior to the sale of an individual life insurance policy that provides long-term care benefits either within the policy or by rider, a policy summary shall be delivered to the

applicant. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make delivery no later than the time of the sale of the policy. In addition to complying with all applicable requirements, the summary shall also include:

(I) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(II) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(III) Any exclusions, reductions, or limitations on benefits of long-term care;

(IV) A statement that any long-term care inflation protection option required by section 10-19-113 is not available under the policy.

(b) If applicable to the policy type, the summary shall also include:

(I) A disclosure of the effects of exercising other rights under the policy;

(II) A disclosure of guarantees related to long-term care costs of insurance charges; and

(III) Current and projected maximum lifetime benefits.

(c) The provisions of the policy summary listed in paragraphs (a) and (b) of this subsection (7) may be incorporated into a basic illustration or into the life insurance policy summary.

(8) Whenever a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:

(a) Any long-term care benefits paid out during the month;

(b) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and

(c) The amount of long-term care benefits existing or remaining.

(9) If a claim under a long-term care insurance contract is denied, the issuer shall, within sixty days of the date of a written request by the policyholder or certificate holder, or a representative thereof:

(a) Provide a written explanation of the reasons for the denial; and

(b) Make available all information directly related to the denial.

**Source:** L. 90: Entire article R&RE, p. 648, § 1, effective July 1. L. 95: (4) and (5) added, p. 924, § 23, effective May 25. L. 2007: (1)(e), (2)(g), (6), (7), (8), and (9) added and (4) and (5) amended, pp. 200, 202, §§ 7, 9, 8, effective January 1, 2008.

**10-19-113. Option for inflation adjustment - renewability.** (1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonable anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) The inflation protection feature increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent;

(b) The inflation protection feature guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) The inflation protection feature covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) If the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder; except that, if the policy is issued to a group



defined in section 10-19-103 (4) (d) other than a continuing care retirement community, the offer shall be made to each proposed certificate holder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) (a) An insurer shall include the following information in or with the outline of coverage:

(I) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with the benefit levels of a comparable policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty-year period.

(II) Any expected premium increase or additional premium to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical or graphic demonstration for the purposes of the disclosure required by this subsection (4).

(5) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the time the person has been insured under the policy.

(6) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose, in a conspicuous manner, that the premium may change in the future unless the premium is guaranteed to remain constant.

(7) (a) Inflation protection as provided in subsection (1) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection (7). The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

**I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed plans \_\_\_\_\_, and I reject inflation protection.**

**Source: L. 90:** Entire article R&RE, p. 649, § 1, effective July 1. **L. 2007:** Entire section amended, p. 202, § 10, effective January 1, 2008.

**10-19-113.3. Incontestability period.** (1) With respect to a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny a long-term care insurance claim under such a policy upon a showing of misrepresentation that is material to the acceptance for coverage.

(2) With respect to a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and pertains to the condition for which benefits are sought. A policy or certificate that has been in force for two years shall not be contested solely on the grounds of misrepresentation. Such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(3) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection (3), "field issued" means a policy or certificate is issued by a producer or third-party administrator pursuant to the underwriting authority granted to the producer or third-party administrator by a carrier and using the insurer's underwriting guidelines.

(4) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payment may not be recovered by the insurer in the event that the policy or certificate is rescinded.

(5) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In that

situation, the remaining death benefits under the policies shall be governed by sections 10-7-102 and 10-7-202. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

**Source: L. 95:** Entire section added, p. 924, § 24, effective May 25. **L. 2007:** (3) and (4) amended and (5) added, p. 204, § 11, effective January 1, 2008.

**10-19-113.4. Nonforfeiture benefits - rules.** (1) Except as provided in subsection (2) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period.

(2) When a group long-term care insurance policy is issued, the offer required in subsection (1) of this section shall be made to the group policyholder; except that, if the policy is issued as group long-term care insurance as defined in section 10-19-103 (4) (d), other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificate holder.

(3) The commissioner shall promulgate rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection (1) of this section.

**Source: L. 2007:** Entire section added, p. 204, § 12, effective January 1, 2008.

**10-19-113.5. Requirement to offer basic and standard long-term care plans - advisory committee established. (Repealed)**

**Source: L. 95:** Entire section added, p. 924, § 24, effective May 25. **L. 96:** (1) amended, p. 120, § 1, effective March 25. **L. 2005:** Entire section repealed, p. 405, § 2, effective August 8.

**10-19-113.6. Producer training requirements.** (1) (a) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for accident and health or sickness or life insurance and has completed a one-time training course on or before January 1, 2009, and ongoing training every twenty-four months thereafter. The training shall meet the requirements set forth in subsection (2) of this section.

(b) The training requirements of subsection (2) of this section may be approved as continuing education courses under section 10-2-301.

(2) (a) The one-time training required by this section shall be no less than sixteen hours, eight hours of which shall consist of long-term care, generally, and eight hours of which shall be specific to long-term care partnerships in a classroom setting. The ongoing training required by this section shall be no less than five hours in a classroom setting.

(b) The training required under paragraph (a) of this subsection (2) shall consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to:

(I) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(II) Available long-term care services and providers;

(III) Changes or improvements in long-term care services or providers;

(IV) Alternatives to the purchase of private long-term care insurance;



(V) The effect of inflation on benefits and the importance of inflation protection; and  
(VI) Consumer suitability standards and guidelines.

(c) The training required by this section shall not include training that is insurer- or company product-specific or that includes any sales or marketing information, materials, or training other than those required by state or federal law.

(3) (a) Each insurer subject to this article shall obtain verification that a producer receives training required by paragraph (a) of subsection (1) of this section before the producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. The insurer shall maintain records in accordance with all applicable record retention requirements and shall make the verification available to the commissioner upon request.

(b) Each insurer subject to this article shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the division of insurance to provide assurance to the state medicaid agency that producers have received the training contained in subparagraph (I) of paragraph (b) of subsection (2) of this section, as required by paragraph (a) of subsection (1) of this section, and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with all applicable record retention requirements and shall be made available to the commissioner upon request.

(4) The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in this state.

**Source:** L. 2007: Entire section added, p. 205, § 12, effective January 1, 2008.

**Cross references:** For more information concerning medicaid, see title 25.5.

**10-19-113.7. Rules.** The commissioner shall adopt rules to promote premium adequacy, to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, producer education, producer compensation, producer examination, penalties, and reporting practices for long-term care insurance. In addition, the commissioner may issue regulations to establish minimum standards concerning suitability.

**Source:** L. 95: Entire section added, p. 924, § 24, effective May 25. L. 96: Entire section amended, p. 1354, § 1, effective June 1. L. 2005: Entire section amended, p. 406, § 3, effective August 8. L. 2007: Entire section amended, p. 206, § 13, effective January 1, 2008.

**10-19-114. Compliance.** No policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with the provisions of this article.

**Source:** L. 90: Entire article R&RE, p. 649, § 1, effective July 1.

**10-19-114.5. Penalties.** In addition to any other penalties provided by the laws of Colorado, any carrier or any producer who violates any requirement of Colorado law relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

**Source:** L. 95: Entire section added, p. 924, § 24, effective May 25.

**10-19-115. Severability.** If any provision of this article or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

**Source:** L. 90: Entire article R&RE, p. 649, § 1, effective July 1.

**LIFE AND HEALTH INSURANCE PROTECTION****ARTICLE 20****Life and Health Insurance  
Protection Association**

**Law reviews:** For article, "1991 Life and Health Insurer Solvency Legislation", see 20 Colo. Law. 1767 (1991).

10-20-101.	Short title.	10-20-112.	Prevention of insolvencies.
10-20-102.	Legislative declaration.	10-20-113.	Credits for assessments paid - tax offsets.
10-20-103.	Definitions.	10-20-114.	Miscellaneous provisions.
10-20-104.	Coverage and limitations - coordination of benefits.	10-20-115.	Examination of the association - annual report.
10-20-105.	Construction.	10-20-116.	Tax exemptions.
10-20-106.	Creation of the association.	10-20-117.	Immunity.
10-20-107.	Board of directors.	10-20-118.	Stay of proceedings - reopening default judgments.
10-20-108.	Powers and duties of the association.	10-20-119.	Prohibited advertisement of association article in insurance sales - notice to policyholders.
10-20-109.	Assessments.	10-20-120.	Prospective application.
10-20-110.	Plan of operation.		
10-20-111.	Powers and duties of the commissioner.		

**10-20-101. Short title.** This article shall be known and may be cited as the "Life and Health Insurance Protection Association Act".

**Source: L. 91:** Entire article added, p. 1256, § 1, effective July 1.

**10-20-102. Legislative declaration.** (1) The general assembly finds and declares that the purpose of this article is to protect, subject to certain limitations, the persons specified in section 10-20-104 (1) against failure by member insurers in the performance of their contractual obligations under life and health insurance policies and annuity contracts specified in section 10-20-104 (2), because of the insolvency of the member insurer that issued the policies or contracts.

(2) To provide the protection specified in subsection (1) of this section, an association of insurers shall be created and shall exist to pay benefits and to continue coverages as limited pursuant to this article. Members of the association are subject to assessment to provide funds to carry out the purpose of this article.

**Source: L. 91:** Entire article added, p. 1256, § 1, effective July 1.

**10-20-103. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Account" means any of the three accounts created pursuant to section 10-20-106.
- (2) "Association" means the life and health insurance protection association as established by this article.
- (3) "Board" means the board of the association.
- (4) "Commissioner" means the commissioner of insurance.
- (5) "Contractual obligation" means any obligation under a policy, contract, or certificate under a group policy or contract, or portion thereof, for which coverage is provided pursuant to section 10-20-104.
- (6) "Covered policy" means any policy or contract within the scope of this article.
- (7) "Insolvent insurer" means a member insurer which after July 1, 1991, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.



(8) "Member insurer" means any insurer licensed or who holds a certificate of authority in this state to write any kind of insurance for which coverage is provided pursuant to section 10-20-104 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn; but "member insurer" does not include:

- (a) A nonprofit hospital or medical service organization;
- (b) A health maintenance organization;
- (c) A fraternal benefit society;
- (d) A mandatory state pooling plan;
- (e) CoverColorado;
- (f) A stipulated premium insurance company;
- (g) A local mutual burial association;
- (h) A mutual assessment company or any entity that operates on an assessment basis;
- (i) An interinsurance exchange;
- (i.5) A health care coverage cooperative; and
- (j) Any entity similar to those specified in this subsection (8).

(9) "Moody's average" means Moody's corporate bond yield average monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(10) "NAIC" means the national association of insurance commissioners.

(10.5) "Owner" of a policy or contract for insurance, or "policy owner", or "contract owner", means the person who is identified as the legal owner under the terms of the policy or contract for insurance or who is otherwise vested with legal title to the policy or contract for insurance through a valid assignment completed in accordance with the terms of the policy or contract for insurance and properly recorded as the owner on the books of the insurer. The terms "owner", "contract owner", and "policy owner" do not include persons with a beneficial interest in a policy or contract.

(11) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(12) "Premiums" means amounts received on covered policies or contracts less returned premiums, returned considerations, and returned deposits, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 10-20-104 (2); except that assessable premiums shall not be reduced on account of section 10-20-104 (2) (b) (III) relating to interest limitations and section 10-20-104 (3) (b) relating to limitations with respect to any one life.

(13) "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States who are residents of a foreign country, United States possession, United States territory, or United States protectorate, which country, possession, territory, or protectorate does not have an association similar to the association created by this article, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

(13.5) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(14) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(15) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

**Source:** L. 91: Entire article added, p. 1257, § 1, effective July 1. L. 2000: (10.5), (13.5), and (15) added and (13) amended, p. 1017, § 1, effective July 1. L. 2001: (8)(e) amended, p. 1051, § 38, effective July 1. L. 2004: (8)(i) amended and (8)(i.5) added, p. 1009, § 15, effective August 4.

**10-20-104. Coverage and limitations - coordination of benefits.** (1) This article shall provide coverage for the policies and contracts specified in subsection (2) of this section and to persons:

(a) Who are owners of or certificate holders under such policies or contracts, other than structured settlement annuities, and who:

(I) Are residents; or

(II) Are not residents, but only under all of the following conditions:

(A) The insurer which issued such policies or contracts is domiciled in this state;

(B) Such insurer never held a license or certificate of authority in the states in which such persons reside;

(C) Such states have associations similar to the association created by this article; and

(D) Such persons are not eligible for any amount of coverage by such associations;

(b) Regardless of where they reside, except for nonresident certificate holders under group policies or contracts, who are the beneficiaries, assignees, or payees of the persons covered under paragraph (a) of this subsection (1).

(1.3) Subsection (1) of this section shall not apply to structured settlement annuities. Except as otherwise provided in subsections (1.5) and (1.7) of this section, this article shall provide coverage to a person who is a payee under a structured settlement annuity or to a beneficiary of a deceased payee if the payee:

(a) Is a resident, regardless of where the contract owner resides; or

(b) Is not a resident, but only under both of the following conditions:

(I) Either:

(A) The contract owner of the structured settlement annuity is a resident; or

(B) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by this article; and

(II) Neither the payee, the beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

(1.5) This article shall not provide coverage to a person who is a payee or beneficiary of a contract owner who is a resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(1.7) This article is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this article is provided coverage under the laws of any other state, the person shall not be provided coverage under this article. In determining the application of the provisions of this subsection (1.7) in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this article shall be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) This article shall provide coverage to the persons specified in subsection (1) of this section for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts issued by member insurers pursuant to articles 7 and 8 and parts 1 and 2 of article 16 of this title, except as limited by this article.

(b) This article shall not provide coverage for:

(I) Any portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract holder;

(II) Any policy or contract of reinsurance, unless assumption certificates have been issued;

(III) Any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or other factor employed in calculating returns or changes in value which may include, without limitation, an index or other external reference stated in the policy or contract:

(A) When averaged over the period of four years prior to the date that the member insurer becomes an insolvent insurer under this article, exceeds a rate of interest determined by subtracting two percentage points from Moody's average, averaged for that same



four-year period, or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an insolvent insurer under this article; and

(B) On and after the date that the member insurer becomes an insolvent insurer under this article, exceeds the rate of interest determined by subtracting three percentage points from Moody's average as most recently available;

(IV) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members, to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(A) A multiple employer welfare arrangement, as defined in section 514 of the federal "Employee Retirement Income Security Act of 1974", as amended;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(V) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(VI) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(VII) Any unallocated annuity contract;

(VIII) Any annuity contract or group annuity certificate which is used by a nonprofit insurance company exclusively for the benefit of nonprofit educational institutions and their employees for the purpose of providing retirement benefits;

(IX) Any policy, contract, certificate, or subscriber agreement issued by a prepaid dental care plan as defined in parts 1 and 5 of article 16 of this title;

(X) Sickness and accident insurance as defined in section 10-16-102 (30) when written by a property and casualty insurer as part of an automobile insurance contract;

(XI) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation;

(XII) Any insurer which was insolvent or unable to fulfill its contractual obligations as of July 1, 1991; except that an annuity contract issued or assumed by such an insurer shall be covered under this article if such insurer was ordered into liquidation between July 1, 1991, and August 31, 1991;

(XIII) Any policy or contract covering persons who are not citizens of the United States;

(XIV) Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract but such changes have not been credited to the policy or contract, or to the extent the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an insolvent insurer under to this article. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of insolvency, and such interest or changes shall not be subject to forfeiture.

(XV) Any kind of insurance or annuity, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity.

(3) The benefits for which the association may become liable shall not exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an insolvent insurer; or

(b) (I) With respect to any one life, regardless of the number of policies or contracts with that insurer:

(A) Three hundred thousand dollars in net life insurance death benefits, and no more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) For health insurance benefits: One hundred thousand dollars for coverages not defined as disability, basic hospital, medical and surgical, or major medical insurance, including any net cash surrender and net cash withdrawal values; three hundred thousand dollars for disability insurance; or five hundred thousand dollars for basic hospital, medical and surgical, or major medical insurance;

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(D) With respect to each payee of a structured settlement annuity, two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values; or

(E) Three hundred thousand dollars for long-term care benefits.

(II) The association shall not be liable to expend more than three hundred thousand dollars, in the aggregate, with respect to any one life under sub-subparagraphs (A) to (E) of subparagraph (I) of this paragraph (b); except that, with respect to benefits for basic hospital, medical and surgical, and major medical insurance under sub-subparagraph (B) of subparagraph (I) of this paragraph (b), the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual.

(4) The liability of the association is strictly limited by the express terms of such covered policies and contracts and by the provisions of this article and is not affected by the contents of any brochures, illustrations, advertisements, or oral statements by agents, brokers, or others, used or made in connection with the sale of such covered policies and contracts. The association is not liable for any extracontractual, exemplary, or punitive damages, attorney fees, or interest other than as provided for by the terms of such covered policies or contracts.

**Source:** **L. 91:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** (2)(a), (2)(b)(IX), and (2)(b)(X) amended, p. 1725, § 11, effective July 1. **L. 94:** (2)(b)(XII) amended, p. 614, § 1, effective April 13. **L. 2000:** IP(1)(a), (2)(b)(III), (2)(b)(VII), (2)(b)(XIII), (2)(b)(XIV), and (3)(b) amended and (1.3), (1.5), and (1.7) added, p. 1018, § 2, effective July 1. **L. 2010:** (3)(b)(I)(C), (3)(b)(I)(D), and (3)(b)(II) amended and (3)(b)(I)(E) added, (SB 10-049), ch. 15, p. 75, § 1, effective March 5.

**10-20-105. Construction.** This article shall be construed to effect the purpose set forth in section 10-20-102, which shall constitute an aid and guide to interpretation.

**Source:** **L. 91:** Entire article added, p. 1261, § 1, effective July 1.

**10-20-106. Creation of the association.** (1) There is hereby created a private non-profit legal entity to be known as the life and health insurance protection association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions pursuant to the plan of operation specified in section 10-20-110 and shall exercise its powers through the board of directors provided in section 10-20-107. For purposes of administration and assessment, the association shall maintain three accounts:

- (a) The life insurance account;
- (b) The health insurance account; and
- (c) The annuity account.

(2) The association is under the supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public consistent with the provisions of the insurance laws of Colorado.

**Source:** **L. 91:** Entire article added, p. 1261, § 1, effective July 1.



**10-20-107. Board of directors.** (1) The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the first board and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board, but members of the board shall not otherwise be compensated by the association for their services.

**Source: L. 91:** Entire article added, p. 1262, § 1, effective July 1.

**10-20-108. Powers and duties of the association.** (1) In addition to any other powers and duties provided for in this article, the association has the following powers and duties:

(a) If a domestic insurer is an insolvent insurer, the association shall, subject to the limitations of this article and subject to the approval of the commissioner:

(I) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;

(II) Assure payment of the contractual obligations of the insolvent insurer; and

(III) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or

(b) With respect to only life and health insurance policies, provide benefits and coverages in accordance with subsection (3) of this section.

(2) (a) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

(I) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(II) Assure payment of the contractual obligations of the insolvent insurer to the residents; and

(III) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge those duties; or

(IV) With respect to only life and health insurance policies, provide benefits and coverages in accordance with subsection (3) of this section.

(b) This subsection (2) shall not apply if the commissioner has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this article for residents of the state.

(3) (a) When proceeding under paragraph (b) of subsection (1) or subparagraph (IV) of paragraph (a) of subsection (2) of this section, the association shall, with respect to only life and health insurance policies:

(I) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred;

(A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;

(II) Make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, thirty days notice of the termination of the benefits provided;

(III) With respect to individual policies, make available to each known insured or owner if other than the insured, and with respect to group policies, make available to each individual formerly insured who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of paragraph (b) of this subsection (3), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provisions of the policy or had a right only to make changes in premium by class.

(b) (I) In providing the substitute coverage required under subparagraph (III) of paragraph (a) of this subsection (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(II) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(III) The association may reinsure any alternative or reissued policy.

(c) (I) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular insolvency.

(II) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall be reasonably related to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt as approved by the commissioner. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(III) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the insolvent insurer, as determined by the association.

(d) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(e) The obligations of the association, with respect to coverage under any policy of the insolvent insurer or under any reissued or alternative policy, shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(4) When proceeding pursuant to subsection (2) (a) (II) or (2) (b) of this section, with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 10-20-104 (2) (b) (III) (A) and (2) (b) (III) (B).

(5) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the obligations of the association under such policy or coverage under this article with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(6) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy contract owners arising after the entry of such order.

(7) In carrying out its duties under subsections (1) and (2) of this section, the association may, subject to approval by the court:

(a) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the duties of the association under this article, or that the economic or



financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest;

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(8) If the association fails to act within a reasonable period of time as provided in subsections (1), (2), and (3) of this section, the commissioner shall have the powers and duties of the association under this article with respect to insolvent insurers.

(9) There shall be no liability on the part of and no cause of action shall arise against the association or against any transferee from the association in connection with the transfer by reinsurance or otherwise of all or any part of an insolvent insurer's business by reason of any action taken or any failure to take any action by the insolvent insurer at any time.

(10) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning payment of claims, continuance of coverage, the performance of other contractual obligations of any insolvent insurer, or any member insurer's performance of its contractual obligations.

(11) The association shall have standing to appear or intervene before any court or agency in this state which has jurisdiction over a member insurer for which the association is or may become obligated under this article, or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the member insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over a member insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(12) (a) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or the provision of substitute or alternative coverage. The association may require an assignment to it of such rights and causes of action by any payee, policy, or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this article upon such person.

(b) The subrogation rights of the association under this subsection (12) shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(c) In addition to paragraphs (a) and (b) of this subsection (12), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent insurer, owner, beneficiary, or payee of a policy or contract with respect to such policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent the benefits received pursuant to this article against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the federal "Internal Revenue Code of 1986", as amended.

(13) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments pursuant to section 10-20-109 and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of this article, and any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this article;

(e) Take such legal action as may be necessary to avoid payment of improper claims;

(f) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but the association shall not issue insurance policies or annuity contracts other than those issued to perform its obligations under this article;

(g) Negotiate and contract with any liquidator or ancillary receiver to carry out the powers and duties of the association;

(g.5) Request information from persons seeking coverage from the association in order to aid the association in determining its obligations under this article with respect to the person; and a person receiving such request shall promptly comply;

(g.7) Take other necessary or appropriate action to exercise its powers and discharge its duties and obligations under this article;

(h) With respect to covered policies for which the association becomes obligated after an entry of an order of liquidation, elect to succeed to the rights of an insolvent insurer arising after the date of the order of liquidation under any contract of reinsurance to which the insolvent insurer was a party, to the extent that such contract provides coverage for losses occurring after the date of the order of liquidation. As a condition to making this election, the association shall pay unpaid premiums due with respect to policies covered by the association for coverage relating to periods both before and after the date of the order of liquidation.

(14) The association may join an organization of one or more other state associations of similar purposes to further the purposes and to administer the powers and duties of the association.

(i5) Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent the person or entity would have been required to cooperate with the insolvent insurer. The association has no cause of action against the insured of the insolvent insurer for any sums the association has paid out except those causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer. If an insolvent insurer operates on a plan with assessment liability, payments of claims by the association do not reduce the liability of the insured to the receiver, liquidator, or statutory successor for unpaid assessments.

(16) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The association has a claim against the estate of the insolvent insurer to the extent of claims and expenses paid by the association in connection with the duties of the association as to the insolvent insurer. The court having jurisdiction shall grant these settled claims in the priority to which the claimant would have been entitled in the absence of this article against the assets of the insolvent insurer. The expenses, including legal fees of the association or similar organization in handling claims, shall be given the same priority as the expenses of the liquidator.

(17) The association shall periodically file with the liquidator of the insolvent insurer statements of the covered claims and associated expenses paid by the association and estimates of anticipated claims against the association. This periodic filing preserves the rights of the association for claims against the assets of the insolvent insurer.

(18) The association shall investigate claims brought against it and adjust, compromise, settle, and pay covered claims to the extent of the obligation of the association and deny all other claims.

(19) A person who has a claim against an insurer pursuant to a provision of an insurance policy, other than a policy of an insolvent insurer, that also is a contractual obligation under this article, must first exhaust his right under that policy. The amount of an approved claim under this article shall be reduced by the policy limits of, or amount paid under, that insurance policy, whichever amount is greater. If a claimant exhausts all rights under a policy other than a policy of an insolvent insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the insolvent insurer to recover



an amount paid to the claimant under the policy; except that a person having a contractual obligation, as defined by this article, under a life insurance policy or an annuity contract issued by an insolvent insurer is not required to exhaust other coverage for that claim, and the amount of an approved claim under a life insurance policy or annuity contract issued by an insolvent insurer may not be reduced because of that duplicate coverage.

(20) Where the association has arranged or offered to provide the benefits of this article to a covered person under a plan or arrangement that fulfills the association's obligations under this article, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(21) Venue in a suit against the association arising under this article shall be in the city and county of Denver. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this article.

(22) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under this section, the association may issue substitute coverage for a policy or contract that provides for the calculation of returns or changes in value by the use of an interest rate, crediting rate, or similar factor determined by use of an index or other external reference, by issuing an alternative policy or contract in accordance with the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value;

(b) There is no requirement for the evidence of insurability, a waiting period, or any other exclusion that would not have applied under the replaced policy or contract;

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

**Source:** **L. 91:** Entire article added, p. 1262, § 1, effective July 1. **L. 94:** IP(3)(a) and (4) amended, p. 1650, § 93, effective May 31. **L. 2000:** (10), (11), (12)(a), and (12)(c) amended and (13)(g.5), (13)(g.7), (20), (21), and (22) added, p. 1020, §§ 3, 4, effective July 1. **L. 2002:** (13)(h) amended, p. 122, § 1, effective March 26.

**10-20-109. Assessments.** (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess each member insurer separately for each account at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at the rate set forth in 28 U.S.C. sec. 1961 on and after the due date.

(2) There shall be two assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 10-20-112 (5). Class A assessments may be made whether or not related to a particular insolvent insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 10-20-108 with regard to an insolvent insurer.

(3) (a) The amount of any class A assessment shall be determined by the board and may be made on a non-pro rata basis. A non-pro rata assessment shall not exceed one hundred fifty dollars per member insurer in any one calendar year. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the insolvent insurer or any other standard deemed by the board in its sole discretion to be fair and reasonable under the circumstances.

(b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became

insolvent, bear to such premiums received on business in this state for such calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection (3) shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(5) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of the average premiums received by such insurer in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became insolvent. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any of the accounts an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article. The board shall provide in the plan of operation a method of allocating funds among claims, whether relating to one or more insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(6) The board shall, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out, during the coming year, the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount shall be retained in each account to provide funds for the continuing expenses of the association and for future losses.

(7) It shall be proper for any member insurer, in determining its premium rates and policyholder dividends as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assessment obligations under this article.

(8) The association shall issue to each insurer paying an assessment for the life and annuity accounts under this article, other than a class A assessment, a certificate of contribution from the association, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. Such certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve; but the insurer shall, at its option, have the right in any event to show such certificate of contribution as an admitted asset at percentages of the original face amount of the assessment for calendar years as follows:

(a) One hundred percent for the first year after issuance; and

(b) One hundred percent less any amount already taken as an offset against premium tax liability pursuant to section 10-20-113 for the second and subsequent years after issuance.

(9) Any member insurer whose certificate of authority has been terminated for any reason whatsoever shall be liable for any assessment based on insolvencies arising prior to such termination.

(10) An assessment is deemed to occur on the date upon which the board votes such assessment. The board may defer calling the payment of the assessment or may call for payment in one or more installments.

**Source: L. 91:** Entire article added, p. 1269, § 1, effective July 1. **L. 2000:** (8) amended, p. 1022, § 5, effective July 1.



**10-20-110. Plan of operation.** (1) (a) The association shall maintain a plan of operation to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall be submitted to the commissioner and be effective upon the commissioner's written approval or after thirty days if said commissioner has not disapproved.

(b) If the association fails to submit a suitable plan of operation or suitable amendments to the plan by January 1, 1992, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to any other provisions specified in this article:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board pursuant to section 10-20-107;

(c) Establish regular places and times for meetings including telephone conference calls of the board;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board;

(e) Establish the procedures whereby selections for the board will be made and submitted to the commissioner;

(f) Establish any additional procedures for assessments under section 10-20-109;

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those established pursuant to sections 10-20-108 (12) (c) and 10-20-109, are delegated to a corporation, association, or other organization which performs, or will perform, functions similar to those of the association established pursuant to this article, or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation pursuant to this subsection (4) shall take effect only with the approval of both the board and the commissioner and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this article.

(5) The plan of operation shall establish a procedure for protest by a member insurer of assessments made by the association pursuant to section 10-20-109. Such procedure shall require that:

(a) Any member insurer that wishes to protest all or any part of an assessment for any year shall first pay the full amount of the assessment as set forth in the notice provided by the association. Such payments shall be accompanied by a statement in writing that the payment is made under protest, setting forth a brief statement of the ground for the protest. The association shall hold such payments in a separate interest-bearing account.

(b) Within thirty days following the payment of an assessment under protest by any protesting member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member that additional time is required to resolve the issues raised by the protest.

(c) In the event the association determines that the protesting member insurer is entitled to a refund, such refund shall be made within thirty days following the date upon which the association makes its determination.

(d) In the alternative to rendering a decision with respect to any protest based on a question regarding the assessment base, the association may refer such protests to the commissioner for final decision, with or without a recommendation from the association.

(e) Interest on any refund due a protesting member insurer shall be paid at the rate actually earned by the association.

**10-20-111. Powers and duties of the commissioner.** (1) In addition to any other powers and duties specified in this article, the commissioner shall:

(a) Upon request of the board, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer;

(b) Notify the board of the existence of an insolvent insurer not later than three days after a determination of insolvency is made by the commissioner, irrespective of limitations imposed upon the commissioner in section 10-3-401;

(c) In any liquidation proceeding involving a domestic insurer, be appointed as the liquidator.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month.

(3) The liquidator of any insolvent insurer shall notify all interested persons of the effect of this article.

**Source: L. 91:** Entire article added, p. 1274, § 1, effective July 1.

**10-20-112. Prevention of insolvencies.** (1) To aid in the detection and prevention of insurer insolvencies, it shall be the duty of the commissioner:

(a) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when action is taken in any of the following matters against a member insurer:

(I) Revocation of license;

(II) Suspension of license; or

(III) Issuance of a formal order that such member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors. Such notice shall be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs.

(b) To report to the board when the commissioner has taken any of the actions set forth in paragraph (a) of this subsection (1) or has received a report from any other commissioner indicating that such action has been taken in another state. Such report to the board shall contain all significant details of the action taken or the report received from another commissioner.

(c) To report to the board when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of a member company that such member company may be an insolvent insurer;

(d) To furnish to the board the NAIC insurance regulatory information system ratios and listings of companies not included in the ratios developed by the NAIC, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board until such time as made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board concerning any matter affecting said commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board shall, upon request of the commissioner, report and make recommendations to the commissioner upon any matter germane to the solvency or liquidation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.

(4) The board shall notify the commissioner when the board has actual knowledge that an insurer may be insolvent.



(5) The board shall request that the commissioner order an examination of any member insurer which the board in good faith believes may be insolvent. Within thirty days after the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as an NAIC examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated confidentially. In no event shall such examination report be released to the board prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1) of this section. The commissioner shall notify the board when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public. For purposes of this subsection (5), a "request" is not a report or recommendation.

(6) The board may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(7) The board may, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board may cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by such other associations.

**Source:** L. 91: Entire article added, p. 1274, § 1, effective July 1. L. 2000: (3), (4), (5), (6), and (7) amended, p. 1023, § 6, effective July 1.

**10-20-113. Credits for assessments paid - tax offsets.** (1) (a) A member insurer may offset against its premium tax liability to this state that amount of its class B assessment described in section 10-20-109 that was assessed for the association's life and annuity accounts pursuant to section 10-20-106 to the extent of twenty percent of the amount of such assessment for each of the first, second, third, fourth, and fifth calendar years following the year in which such assessment was paid.

(b) To the extent the offsets specified in paragraph (a) of this subsection (1) exceed the member insurer's premium tax liability, they may be carried forward to offset premium tax liabilities in future years. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(c) In no event shall the total amount of all such offsets for all member insurers exceed four million dollars in any year. The association shall prorate the amount of such offset among all member insurers if the total amount of offset would otherwise exceed four million dollars in any such year and shall notify each insurer of the maximum amount of offset allowable for that year and the amount of the excess offset, if any, that may be carried forward to future years.

(d) (I) Each member insurer writing health insurance is required to recoup over a reasonable length of time a sum reasonably calculated to recoup the assessments paid by the member insurer under this article by way of a surcharge on premiums charged for health insurance policies to which this article applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agent's commission.

(II) The amount of the surcharge shall be filed as part of an insurer's rate filing pursuant to section 10-16-107 (1). Such surcharge must be shown in the rate filing as a separate component of the rate and shall include supporting documentation.

(III) Such member insurers who collect surcharges in excess of assessments paid pursuant to this article for an insolvent insurer shall remit the excess to the association as an additional assessment within one hundred twenty days after the end of the collection period as determined by the association. The excess shall be applied to reduce future assessments for that insurer in the appropriate category.

(IV) Any such member insurer may omit the collection of the surcharge in any year from its insureds when the expense of collecting the surcharge in any such year would

exceed the amount of the surcharge. However, nothing in this paragraph (d) shall relieve the member insurer of its ultimate obligation to recoup the amount of the surcharge otherwise collectible from any such previous year.

(2) Any sums which are acquired by refund pursuant to section 10-20-109 (6) from the association by member insurers, and which have theretofore been offset against premium taxes as provided in subsection (1) of this section, shall be paid by such insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such payments have been made.

**Source:** L. 91: Entire article added, p. 1276, § 1, effective July 1. L. 92: (1)(d)(II) amended, p. 1726, § 12, effective July 1. L. 2000: (1)(a) and (1)(c) amended, p. 1023, § 7, effective July 1.

**10-20-114. Miscellaneous provisions.** (1) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties pursuant to section 10-20-108. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation proceeding involving the insolvent insurer, upon the termination of the insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection (2) shall limit the duty of the association to render a report of its activities under section 10-20-115.

(3) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as assignee or subrogee pursuant to section 10-20-108 (11). Assets of the insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the insolvent insurer as required by this article. "Assets attributable to covered policies", as used in this subsection (3), are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the insolvent insurer.

(4) (a) Prior to the termination of any liquidation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties pursuant to section 10-20-108 with respect to such insurer have been fully recovered by the association.

(5) (a) If an order for liquidation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation subject to the limitations of paragraphs (b) to (d) of this subsection (5).

(b) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate which controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions such person received. Any person who was an affiliate which controlled the insurer at the time the distributions were declared shall be liable up to the amount of the distributions such person



would have received if said distributions had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection (5) shall be the amount needed, in excess of all other available assets of the insolvent insurer, to pay the contractual obligations of the insolvent insurer.

(e) If any person liable pursuant to paragraph (c) of this subsection (5) is insolvent, all of its affiliates which controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(6) Nothing in this article shall be construed to make the state of Colorado in any way liable for the obligations of the life and health insurance protection association or the unpaid claims of impaired or insolvent life and health insurance companies.

**Source: L. 91:** Entire article added, p. 1278, § 1, effective July 1.

**10-20-115. Examination of the association - annual report.** The association shall be subject to examination and regulation by the commissioner. The board shall submit to the commissioner each year, not later than one hundred twenty days after the close of the fiscal year of the association, a financial report in a form approved by the commissioner, and a report of the activities of the board during the preceding fiscal year.

**Source: L. 91:** Entire article added, p. 1280, § 1, effective July 1.

**10-20-116. Tax exemptions.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real and personal property.

**Source: L. 91:** Entire article added, p. 1280, § 1, effective July 1.

**10-20-117. Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, its agents, or its employees, the association, its agents, or its employees, members of the board or the commissioner or his representatives for any action or omission by them in the performance of their powers and duties pursuant to this article. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

**Source: L. 91:** Entire article added, p. 1280, § 1, effective July 1.

**10-20-118. Stay of proceedings - reopening default judgments.** All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed for sixty days after the date an order of liquidation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that issued such judgment and shall be permitted to defend against such suit on the merits.

**Source: L. 91:** Entire article added, p. 1280, § 1, effective July 1.

**10-20-119. Prohibited advertisement of association article in insurance sales - notice to policyholders.** (1) No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other

way, any advertisement, announcement, or statement, written or oral, which uses the existence of the life and health insurance protection association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the "Life and Health Insurance Protection Association Act". However, this section shall not apply to the association or any other entity which does not sell or solicit insurance.

(2) By December 1, 1991, the association shall prepare a summary document describing the general purposes and current limitations of this article, and such summary document shall be in compliance with subsection (3) of this section. Such summary document shall be submitted to the commissioner for approval. Sixty days after receiving such approval, each member shall, when delivering a policy or contract as described in section 10-20-104 (2) (a) to a policyholder or contract holder, deliver such summary document concurrently or prior to the delivery of such policy or contract, except when subsection (4) of this section applies. The summary document shall also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of the summary document shall not mean that either the policy or the contract or the holder thereof will be covered in the event of impairment or insolvency of a member insurer. The summary document shall be revised by the association pursuant to amendments to this article or as other circumstances may require. Failure to receive this summary document does not give a policyholder, a contract holder, or an insured any rights other than those stated in this article.

(3) The summary document prepared pursuant to subsection (2) of this section shall contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer shall:

(a) State the name and address of the association and the division of insurance;

(b) Prominently warn the policyholder or contract holder that the association may not cover the policy or, if coverage is available, such policy may be subject to substantial limitations and exclusions and shall be conditioned on the continued residence in the state by the policyholder or contract holder;

(c) State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) Emphasize that the policyholder or contract holder should not rely on coverage by the association when selecting an insurer;

(e) Provide other information as directed by the commissioner.

(4) No insurer or agent may deliver a policy or contract described in section 10-20-104 (2) (a), but excluded under section 10-20-104 (2) (b) (I) from coverage under this article, unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the association. The commissioner shall specify the form and content of the notice.

**Source: L. 91:** Entire article added, p. 1280, § 1, effective July 1.

**10-20-120. Prospective application.** This article shall not apply to any insurer which is declared insolvent before July 1, 1991.

**Source: L. 91:** Entire article added, p. 1282, § 1, effective July 1.

## HEALTH CARE

**Cross references:** For the "Colorado Health Care Coverage Act", see article 16 of this title.

## ARTICLE 21

### The Colorado Care Health Insurance Program

**10-21-101 to 10-21-106. (Repealed)**

**Source: L. 2004:** Entire article repealed, p. 1011, § 23, effective August 4.



**Editor’s note:** This article was added in 1992. For amendments to this article prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 22

Colorado Health Benefit Exchange

**Cross references:** For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 1 and 2 of chapter 246, Session Laws of Colorado 2011. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

10-22-101.	Short title.		board.
10-22-102.	Legislative declaration - intent.	10-22-107.	Legislative health benefit exchange implementation review committee - creation - duties.
10-22-103.	Definitions.		
10-22-104.	Health benefit exchange - creation.	10-22-108.	Moneys for implementation of the exchange.
10-22-105.	Exchange board of directors.		
10-22-106.	Powers and duties of the		

**10-22-101. Short title.** This article is known and may be cited as the “Colorado Health Benefit Exchange Act”.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1073, § 1, effective June 1.

**10-22-102. Legislative declaration - intent.** The general assembly determines and declares that with the March 23, 2010, enactment of the federal “Patient Protection and Affordable Care Act”, Pub.L. 111-148, and the March 30, 2010, enactment of the “Health Care and Education Reconciliation Act of 2010”, Pub.L. 111-152, which allow each state to establish a health benefit exchange through state law or opt to participate in a national health benefit exchange operated by the federal department of health and human services, and although there are numerous federal lawsuits challenging the constitutionality of the federal act in multiple federal courts, the best option for the state of Colorado is to establish a health benefit exchange at the state level. The general assembly further finds that the federal act requires each state to establish a health benefit exchange to perform certain duties and to assume certain responsibilities set forth in the federal act or make sufficient progress in the creation of a health benefit exchange by January 1, 2013, or default to a federally run national health benefit exchange. Therefore, the general assembly intends to create a health benefit exchange to fit the unique needs of Colorado, seek Colorado-specific solutions, and explore the maximum number of options available to the state of Colorado. The Colorado health benefit exchange, including an American health benefit exchange, is intended to facilitate the access to and enrollment in health plans in the individual market in this state and include a small business health options program to assist small employers in this state in facilitating the enrollment of their employees in health plans offered in the small employer market. The intent of the Colorado health benefit exchange is to increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1073, § 1, effective June 1.

**10-22-103. Definitions.** As used in this article, unless the context otherwise requires:  
(1) “Board” means the board of directors of the exchange, appointed in accordance with section 10-22-105.

(2) “Committee” means the legislative health benefit exchange implementation review committee created in section 10-22-107.

(3) “Exchange” means the Colorado health benefit exchange created in this article.

(4) “Federal act” means the “Patient Protection and Affordable Care Act”, Pub.L. 111-148, as amended by the “Health Care and Education Reconciliation Act of 2010”, Pub.L. 111-152.

(5) “Secretary” means the secretary of the United States department of health and human services.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1074, § 1, effective June 1.

**10-22-104. Health benefit exchange - creation.** There is hereby created a nonprofit unincorporated public entity known as the health benefit exchange. The board of directors shall govern the operation of the exchange. The board shall determine and establish the development, governance, and operation of the exchange. The exchange is an instrumentality of the state; except that the debts and liabilities of the exchange do not constitute the debts and liabilities of the state, and neither the exchange nor the board is an agency of the state. The board does not have the authority to promulgate rules pursuant to the “State Administrative Procedure Act”, article 4 of title 24, C.R.S. The exchange shall not duplicate or replace the duties of the commissioner established in section 10-1-108, including rate approval, except as directed by the federal act. The exchange shall foster a competitive marketplace for insurance and shall not solicit bids or engage in the active purchasing of insurance. All carriers authorized to conduct business in this state may be eligible to participate in the exchange.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1074, § 1, effective June 1.

**10-22-105. Exchange board of directors.** (1) (a) There is hereby created the board of directors of the exchange. The board consists of twelve members, of whom nine are voting members and three are nonvoting, ex officio members. On or before July 1, 2011, the governor shall appoint five voting members to the board, and the president of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives shall each appoint one voting member to the board. The governor shall not appoint more than three members from the same political party. The board shall elect one of its members as chair of the board. Members of the board may be removed by their respective appointing authorities for cause. The person making the original appointment or reappointment, or whoever is entitled to make the appointment on the date of a vacancy, shall fill the vacancy by appointment for the remainder of an unexpired term. Members may serve a maximum of two consecutive terms. If a member is appointed to fill a vacancy and serves for more than half of the unexpired term, the member shall be eligible for appointment to only one more consecutive term.

(b) The persons making the appointments shall coordinate appointments to ensure that there is broad representation within the skill sets specified in this paragraph (b) and shall consider the geographic, economic, ethnic, and other characteristics of the state when making the appointments. A majority of the voting members must be business representatives or individuals who are not directly affiliated with the insurance industry, and none shall be state employees. Of the members first appointed, in order to ensure staggered terms, four of the governor’s appointees shall serve for a term of two years and the remaining governor’s appointee and other initial appointees shall serve for a term of four years. Thereafter, the terms of the members shall be for four years. Each person appointed to the board should have demonstrated expertise in at least two, and in any case shall have demonstrated expertise in no less than one, of the following areas:

(I) Individual health insurance coverage;

(II) Small employer health insurance;



- (III) Health benefits administration;
- (IV) Health care finance;
- (V) Administration of a public or private health care delivery system;
- (VI) The provision of health care services;
- (VII) The purchase of health insurance coverage;
- (VIII) Health care consumer navigation or assistance;
- (IX) Health care economics or health care actuarial sciences;
- (X) Information technology; or
- (XI) Starting a small business with fifty or fewer employees.

(c) The executive director of the department of health care policy and financing, or his or her designee; the commissioner of insurance, or his or her designee; and the director of the office of economic development and international trade, or his or her designee, shall serve as nonvoting, ex officio members of the board.

(2) Each member of the board is responsible for meeting the requirements of this article and all applicable state and federal laws, rules, and regulations; serving in the public interest of the individuals and small businesses seeking health care coverage through the exchange; and ensuring the operational well-being and fiscal solvency of the exchange.

(3) (a) Board members shall not receive compensation for performance of services for the board but may receive a per diem and reimbursement for travel and other necessary expenses while engaged in the performance of official duties of the board. Per diem and reimbursement expenses are paid through grant moneys received by the board.

(b) A member of the board shall not perform an official act that may have a direct economic benefit on a business or other undertaking in which the member has a direct or substantial financial interest.

(c) A board member or an officer or employee of the exchange is not liable for an act or omission when acting in his or her official capacity, in good faith, without intent to defraud, and in connection with the administration, management, or conduct of this article.

(4) (a) Board members are subject to articles 6, 18, and 72 of title 24, C.R.S.

(b) All moneys received by the board for the exchange are subject to audit by the legislative audit committee. The board shall report all moneys received for the exchange to the legislative audit committee.

(5) Any information provided to a board member pursuant to this article that is exempt from disclosure under either section 24-72-204, C.R.S., or part 4 of article 6 of title 24, C.R.S., shall be and remain confidential and may be used only by the board.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1075, § 1, effective June 1.

**10-22-106. Powers and duties of the board.** (1) The board is the governing body of the exchange and has all the powers and duties necessary to implement this article. The board shall:

(a) Appoint an executive director to administer the exchange, subject to approval by the committee;

(b) Create an initial operational and financial plan, subject to approval by the committee;

(c) Apply for planning and establishment grants made available to the exchange pursuant to the federal act and apply for, receive, and expend other gifts, grants, and donations. Each grant application is subject to the review and unanimous approval of the board chair and the chair and vice-chair of the committee prior to the submission of the application. If there is not unanimous approval, each grant application is subject to review and the majority approval of the committee.

(d) Create technical and advisory groups as needed to report to the board. The advisory groups shall meet regularly throughout the year to discuss issues related to the exchange and make recommendations to the board.

(e) Provide a written report, on or before January 15 of each year, to the governor and the general assembly concerning the planning and establishment of the exchange and

present the report to the senate health and human services committee and the house of representatives health and environment committee, or their successor committees;

(f) Review the internet portal operated and maintained by the secretary and the model template for an internet portal made available by the secretary for use by the state exchanges and review other appropriate internet portals. The review must include an examination as to whether the model template may be used to direct individuals and employers to health plans, to assist individuals and employers in determining whether they are eligible to participate in the exchange or eligible for a premium tax credit or cost-sharing reduction, and to present standardized information regarding health plans offered through the exchange to assist consumers in making health insurance choices.

(g) Consider the desirability of structuring the exchange as one entity that includes two underlying entities to operate in the individual and the small employer markets, respectively;

(h) Consider the appropriate size of the small employer market under the exchange, taking into consideration the definition of "small employer" pursuant to section 10-16-102;

(i) Consider the unique needs of rural Coloradans as they pertain to access, affordability, and choice in purchasing health insurance;

(j) Consider the affordability and cost in the context of quality care and increased access to purchasing health insurance; and

(k) Investigate requirements, develop options, and determine waivers, if appropriate, to ensure that the best interests of Coloradans are protected.

(2) The board may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this article so long as the agreements include adequate protections with respect to the confidentiality of the information that is shared and comply with all state and federal laws, rules, and regulations.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1076, § 1, effective June 1.

**10-22-107. Legislative health benefit exchange implementation review committee - creation - duties.** (1) For the purposes of guiding implementation of an exchange in Colorado, making recommendations to the general assembly, and ensuring that the interests of Coloradans are protected and furthered, there is hereby created the legislative health benefit exchange implementation review committee. The committee shall meet on or before August 1, 2011, and thereafter at the call of the chair as often as five times during each calendar year. The committee may use the legislative council staff to assist its members in researching any matters.

(2) (a) The president of the senate shall appoint three members to the committee. Two appointees shall be members of the senate health and human services committee, the business, labor, and technology committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the senate at large.

(b) The speaker of the house of representatives shall appoint three members to the committee. Two appointees shall be members of the house health and environment committee, the economic and business development committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the house of representatives at large.

(c) The minority leader of the senate shall appoint two members to the committee. One appointee shall be a member of the senate health and human services committee, the business, labor, and technology committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the senate at large.

(d) The minority leader of the house of representatives shall appoint two members to the committee. One appointee shall be a member of the house health and environment committee, the economic and business development committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the house of representatives at large.

(e) Members of the committee shall serve at the pleasure of the appointing authority.



(3) Members of the committee shall serve without compensation; except that each member shall receive the sums specified in section 2-2-307 (3) (a) and (3) (b), C.R.S., for attendance at meetings of the committee when the general assembly is in recess for more than three days or is not in session.

(4) During odd-numbered years, the president of the senate shall appoint the chair and the speaker of the house of representatives shall appoint the vice-chair of the committee. During even-numbered years, the speaker of the house of representatives shall appoint the chair and the president of the senate shall appoint the vice-chair of the committee.

(5) In any year, the committee may report up to five bills or other measures to the legislative council created in section 2-3-301, C.R.S. These bills are exempt from any applicable bill limit imposed on the individual committee members sponsoring such bills if the bills have been approved by the legislative council under joint rules of the senate and house of representatives.

(6) The committee shall review grants applied for by the board to implement the exchange.

(7) The committee shall review the financial and operational plans of the exchange.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1078, § 1, effective June 1.

**10-22-108. Moneys for implementation of the exchange.** Moneys received by the board for the implementation of this article must be transferred directly to the exchange for the purposes of this article. The board shall deposit any moneys received in a banking institution within or outside the state. Moneys from the general fund shall not be used for the implementation of this article, except for the sums specified in section 10-22-107 (3) and for legislative staff agency services. The banking institution must be insured by the federal deposit insurance corporation and compliant with the “Savings and Loan Association Public Deposit Protection Act”, article 47 of title 11, C.R.S.

**Source: L. 2011:** Entire article added, (SB 11-200), ch. 246, p. 1079, § 1, effective June 1.

**CASH BONDING AGENTS**

**ARTICLE 23**

**Cash Bonding Agents**

**Editor’s note:** Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act adding this article applies to offenses committed and applications submitted on or after July 1, 2012.

10-23-101.	Definitions.	10-23-106.	Discipline - hearing - civil penalty.
10-23-102.	Registration required - qualifications - enforcement - repeal.	10-23-107.	Unlicensed practice - penalties.
10-23-103.	Registration requirements - application - qualification bond - forfeiture.	10-23-108.	Bail bond documents - requirements - rules.
10-23-104.	Fees.	10-23-109.	Business practices - price limits - collateral.
10-23-105.	Qualification bond - forfeiture.	10-23-110.	Repeal - review of functions.

**10-23-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Cash-bonding agent” means a person who was licensed by the division as of January 1, 1992, to write bail bonds as a cash-bonding agent.

(2) “On the board” means that the name of the person has been publicly posted or

disseminated by a court as being ineligible to write bail bonds under section 16-4-112 (5) (e) or (5) (f), C.R.S.

(3) "Professional cash-bail agent" means a person who furnishes bail for compensation in any court or courts in this state in connection with judicial proceedings by posting a bond with the division. "Professional cash-bail agent" does not mean a full-time salaried officer or employee of an insurer nor a person who pledges United States currency, a United States postal money order, a cashier's check, or other property in connection with a judicial proceeding, whether for compensation or otherwise.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1509, § 41, effective July 1.

**Editor's note:** This section is similar to former § 12-7-101.

**10-23-102. Registration required - qualifications - enforcement - repeal.** (1) No person qualifies to be a professional cash-bail agent unless the person registers with the division. However, any bail bonding agent who was licensed by the division as of January 1, 1992, to write bail bonds as a cash-bonding agent may continue to be registered upon compliance with the other requirements of this article.

(2) No firm, partnership, association, or corporation, as such, shall be registered. No person engaged as a law enforcement or judicial officer shall be registered as a cash-bonding agent or professional cash-bail agent.

(3) (a) All registrations expire in accordance with a schedule established by the commissioner, and the registrant shall renew or reinstate the registration in accordance with the rules of the commissioner. If the commissioner schedules a registration to expire for longer or shorter than a year, the commissioner shall proportionally adjust the renewal fee for the registration. The registrant must satisfy all registration and renewal requirements to qualify to register.

(b) The commissioner shall give a registrant a sixty-day grace period to renew the registration without discipline or sanctions. The commissioner may establish renewal fees and delinquency fees for reinstatement by rule. If a person fails to renew a registration when required by the schedule established by the commissioner, the registration expires.

(4) The division shall transmit all fees collected under this article to the state treasurer, who shall credit the fees to the division of insurance cash fund created in section 10-1-103.

(5) The division shall prepare and deliver to each registrant a pocket card showing the name, address, and classification of the registrant. The pocket card must clearly state that the person is authorized to practice as a cash-bonding agent or professional cash-bail agent.

(6) (a) Each professional cash-bail agent and cash-bonding agent shall submit an annual report in a format required by the division covering July 1 to June 30, no later than October 1 of the following year, for bail bonds posted in Colorado by the agent during the reporting period:

- (I) The number of bail bonds posted with a court;
- (II) The number of bail bonds discharged by a court;
- (III) The number of bail bonds discharged by a court for which the defendant appeared for all scheduled court appearances for the duration of the bond;
- (IV) The number of bail bonds discharged by a court for which the defendant's bond was revoked by a court at the request of the agent for any reason other than failure to appear;
- (V) The number of bail bonds discharged by a court for which the defendant's bond was revoked by a court at the request of the agent because the defendant was charged with a new criminal offense alleged to have been committed during the duration of the bond; and
- (VI) The number of bail bonds posted by the agent for a defendant during the time the defendant was covered by another bond posted by the agent for another criminal case.

(b) If, during the reporting period from July 1, 2012, to June 30, 2013, or any year thereafter, the professional cash-bail agent or cash-bonding agent, the state judicial department, representatives of law enforcement, and representatives of county government complete the design of an instrument, system, or other method of proper verification of the



actions of an agent in returning the defendant to custody or to the court for further proceedings following a failure to appear on a posted bond, then the agent may report the following:

(I) The number of defendants who were returned to court through the actions of the professional cash-bail agent or cash-bonding agent or the agents thereof after failure to appear;

(II) The number of defendants who were returned to custody by action of the professional cash-bail agent or cash-bonding agent or the agents thereof after failure to appear; and

(III) The number of consents of surety filed with the court to continue the bond after failure to appear.

(c) In the annual report required by this section, the professional cash-bail agent or cash-bonding agent shall sign and affirm the information submitted is true and accurate to the best of the agent's knowledge.

(d) This subsection (6) is repealed, effective July 1, 2015.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1510, § 41, effective July 1.

**Editor's note:** This section is similar to former § 12-7-102.

**10-23-103. Registration requirements - application - qualification bond - forfeiture.** (1) An applicant for registration as a professional cash-bail agent shall supply the following information to the division:

(a) Whether the applicant during the last ten years has been convicted of a felony, entered a guilty plea to a felony, accepted a plea of nolo contendere to a felony, or engaged in or committed an act that violates this article, a rule promulgated under this article, or any act that would violate this article or a rule promulgated under this article if it had been committed in Colorado; and

(b) Any other information required by this article or by the division, including a full-face photograph, for which the applicant shall pay the actual costs if a photograph is required.

(2) Prior to submission of an application under this article, each applicant shall have his or her fingerprints taken by a local law enforcement agency to obtain a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check when the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation.

(3) To qualify as a professional agent, the applicant must have been licensed as an insurance producer who furnishes bail in Colorado for four years before applying for registration as a professional cash-bail agent.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1512, § 41, effective July 1.

**Editor's note:** Subsections (1) and (2) are similar to former § 12-7-103, and subsection (3) is similar to former § 12-7-102.5 (7).

**10-23-104. Fees.** (1) (a) Each professional cash-bail agent and cash-bonding agent shall pay an application fee set by the division in an amount to offset the direct and indirect cost of processing registration applications and issuing a registration.

(b) Each professional cash-bail agent and cash-bonding agent shall pay a registration renewal fee set by the division in an amount that offsets the direct and indirect cost of

implementing this article, net of the total amount of the fees paid by that agent under paragraph (c) of this subsection (1).

(c) Each professional cash-bail agent and cash-bonding agent shall pay to the division a fee of one percent on the gross amount of all premiums and fees collected or contracted for the furnishing of bail, less any premium or fee refunded after being collected. The division may lower the fee if the amount collected would exceed the amount needed to implement this article plus a reserve of sixteen and one-half percent.

(d) The premium fee is due and payable on the fifteenth day of January in each year. Any professional cash-bail agent or cash-bonding agent failing or refusing to render a statement and information, or to pay the fee under this section, for more than thirty days after the time specified, is liable for a penalty of up to one hundred dollars for each additional day of delinquency. The division may assess the penalty and interest at a rate of one percent per month or fraction thereof on the unpaid amount from the date when payment was due to the date when full payment is made. The division may suspend the registration of a delinquent agent until any fees, penalties, and interest are fully paid.

(2) The division shall transfer the fees imposed by this section to the treasurer, who shall credit the fee to the division of insurance cash fund created in section 10-1-103.

(3) For the purpose of auditing a professional cash-bail agent's or cash-bonding agent's premium fee statement, the division may examine any books, papers, records, agreements, or memoranda bearing upon the matters required to be included in the premium fee statement. The agent shall make the books, papers, records, agreements, or memoranda available upon request to the division.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1514, § 41, effective July 1.

**10-23-105. Qualification bond - forfeiture.** (1) Each cash-bonding agent shall post a cash qualification bond of fifty thousand dollars with the division. The bond must be to the people of the state of Colorado in favor of any court in this state, whether municipal, county, district, or other court, and to the division for the purposes of this section. In the event of a forfeiture of a cash-bonding agent's qualification bond, the division has priority over all other claimants. To comply with this subsection (1), the bond must be conditioned upon full and prompt payment into the court ordering the bond forfeited. Cash-bonding agents shall not issue bonds except in accordance with section 16-4-104 (1) (b) (III), C.R.S. In the event of a qualification bond forfeiture, a cash-bonding agent shall not write new bail bonds until the qualification bond is restored to fifty thousand dollars.

(2) Each professional cash-bail agent shall post a cash qualification bond of no less than fifty thousand dollars with the division. The bond shall be to the people of the state of Colorado in favor of any court in this state, whether municipal, county, district, or other court, and to the division for the purposes of this section. A professional cash-bail agent shall not furnish a single bail greater than twice the amount of the bond posted with the division. In the event of a forfeiture of a professional cash-bail agent's qualification bond, the division has priority over all other claimants to the bond. To comply with this subsection (2), the bond must be conditioned upon full and prompt payment into the court ordering the bond forfeited. Professional cash-bail agents shall not issue bonds except in accordance with section 16-4-104 (1) (b) (III), C.R.S. In the event of a qualification bond forfeiture, a professional cash-bail agent shall not write new bail bonds until the qualification bond is restored to at least fifty thousand dollars.

(3) To comply with this section, the division must be designated as an authorized signatory with right of survivorship on any bank account, certificate of deposit, commercial instrument, or security that funds the bond required by this section. The right of survivorship terminates on the later of the date on which any liability covered by the bond is satisfied or released or the third anniversary of the death of the professional cash-bail agent or cash-bonding agent. When the right of survivorship terminates, the division shall release the bond to the agent's estate or, if the estate has been settled, to the heirs of the agent.

(4) To qualify under this section:



(a) A bank account, certificate of deposit, commercial instrument, or security must be in the legal name of the professional cash-bail or cash-bonding agent and not a trade name or other business name;

(b) The qualification bond must consist of assets that are solely owned and in the name of the professional cash-bail or cash-bonding agent and be immediately available for liquidation by the commissioner or the division;

(c) The qualification bond must be worth fifty thousand dollars net of any penalty for withdrawal or liquidation;

(d) The professional cash-bail or cash-bonding agent may receive interest thereon, unless the principal amount of the qualification bond falls below the required fifty thousand dollars, if the qualification bond is an interest-bearing instrument;

(e) The terms of the loan, promissory note, and financial arrangement must be submitted to the division if the qualification bond is funded by the proceeds from a loan, promissory note, or other financial arrangement; and

(f) The agreement must terminate at a fixed time and any rate of return is an annual percentage rate and not tied to any premium or collateral or any other direct function from which an agent makes a profit if the qualification bond consists of moneys from a loan, promissory note, or other financial arrangement.

(5) Upon request by the person who posted the qualification bond to be registered under this article, the commissioner shall release the bond if the person has not been registered or licensed to write a bond as a professional cash-bail agent or cash-bonding agent within the last seven years. Neither the commissioner nor the division are liable to any other party for releasing the qualification bond in accordance with this section.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1515, § 41, effective July 1.

**Editor's note:** Subsection (1) is similar to former § 12-7-103 (3)(a), and subsection (2) is similar to former § 12-7-103 (8)(a).

**10-23-106. Discipline - hearing - civil penalty.** (1) The division may deny, suspend, revoke, or refuse to renew a registration, or issue a cease-and-desist order in accordance with this section, upon reasonable grounds that the registrant:

(a) Failed to post a qualified bond in the required amount with the division while engaged in business or, if the bond was posted, it was forfeited or cancelled;

(b) Knowingly failed to comply with or knowingly violated this article or any proper order or rule of the division or any court of this state where the registrant knew or reasonably should have known of the order or rule;

(c) Violated section 18-13-130, C.R.S.;

(d) Was convicted of a felony or pled guilty or nolo contendere to a felony within the last ten years, regardless of whether the conviction or plea resulted from conduct in or conduct related to the bail bond business;

(e) Served a sentence upon a conviction of a felony in a state correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department within the last ten years;

(f) Continued to execute bail bonds in any court in this state while on the board if the bail forfeiture judgment that resulted in the registrant's being placed on the board has not been paid, stayed, vacated, exonerated, or otherwise discharged;

(g) Furnished bail in any court in this state in an amount greater than twice the amount of the professional cash-bail agent's bond posted with the division;

(h) Failure to report, preserve without use, retain separately, or return after payment in full, collateral taken as security on any bail bond to the principal, indemnitor, or depositor of the collateral;

(i) Soliciting bail bond business in or about any place where prisoners are confined, arraigned, or in custody;

(j) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond; or

(k) Any act prohibited by section 18-13-130, C.R.S.

(2) Except for the reasons listed in paragraphs (d) and (e) of subsection (1) of this section, the division, in lieu of revoking or suspending a registration, may in any one proceeding, by order, require the registrant to pay a civil penalty in the sum of no less than three hundred dollars and no more than one thousand dollars for each offense. If the registrant fails to pay the penalty within twenty days after the mailing of the order, postage prepaid, registered and addressed to the last-known place of business of the registrant, the division may revoke the registration or may suspend the registration for such a period as the commissioner may determine, unless the order is stayed by a court of competent jurisdiction. The division shall transmit the civil penalty to the state treasurer, who shall deposit it in the general fund.

(3) Except as otherwise provided in this section, the commissioner need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The commissioner may commence a proceeding to discipline a registrant when the commissioner has reasonable grounds to believe that the registrant has committed an act enumerated in this section.

(b) In any proceeding held under this section, the commissioner may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings, hearings, and opportunity for review must be conducted in accordance with article 4 of title 24, C.R.S., by the commissioner or by an administrative law judge, at the commissioner's discretion. The commissioner may exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The commissioner may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) The commissioner may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the commissioner.

(II) In order to aid the commissioner in any hearing or investigation instituted under this section, the commissioner or an administrative law judge appointed by the commissioner may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the commissioner or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county where the subpoenaed person or registrant resides or conducts business, upon application by the commissioner with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring the person or registrant to appear before the commissioner; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The commissioner may appoint an administrative law judge under part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report the findings to the commissioner.

(7) (a) The commissioner, the commissioner's staff, any person acting as a witness or consultant to the commissioner, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as commissioner, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a



reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding under this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the commissioner is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. A judicial proceeding to enforce an order of the commissioner may be instituted in accordance with section 24-4-106 (3), C.R.S.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the commissioner, warrants formal action, no person shall resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the commissioner, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or that a person is acting or has acted without the required registration, the commissioner may issue an order to cease and desist such activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist under paragraph (a) of this subsection (10), the registrant may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the commissioner, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the commissioner may issue to the person an order to show cause as to why the commissioner should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) The commissioner shall notify a person against whom an order to show cause has been issued of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the commissioner for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service or by certified, postage-prepaid, United States mail. Personal service or mailing of an order or document constitutes notice of the order to the person.

(c) (I) The commissioner shall hold the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the commissioner as provided in this subsection (11). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter.

(II) If a person against whom an order to show cause has been issued does not appear at the hearing, the commissioner may present evidence that notification was properly sent or served on the person under this subsection (11) and such other evidence related to the matter as the commissioner deems appropriate. The commissioner shall issue the order within ten days after the commissioner's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. The commissioner shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the commissioner reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required licensure, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

(IV) The commissioner shall provide notice, in the manner set forth in this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing is conducted to each person against whom the final order has been issued. The final order issued is effective when issued and is a final order for purposes of judicial review.

(12) If it appears to the commissioner, based upon credible evidence presented to the commissioner, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated under this article, or an order issued under this article; or an act or practice constituting grounds for administrative sanction under this article, the commissioner may enter into a stipulation with the person.

(13) If any person fails to comply with a final cease-and-desist order or a stipulation, the commissioner may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested, the attorney general shall bring suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the commissioner's determination or of the commissioner's final order as provided in subsection (8) of this section.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1517, § 41, effective July 1.

**Editor's note:** This section is similar to former § 12-7-106.

#### ANNOTATION

**Annotator's note.** Since § 10-23-106 is similar to § 12-7-106 as it existed prior to its 2012 relocation with amendments to this section, relevant cases construing that provision have been included in the annotations to this section.

**This section, in its enumeration of reasons for the denial, suspension and revocation of licenses, suggests the abuses which the general assembly found to exist in the bail bond business, all (or any) of which are sufficient to justify legislative intrusion into the field.** *Herbertson v. Dept. of Ins.*, 173 Colo. 327, 478 P.2d 668 (1970).

**Retroactive application of statute.** Intent of general assembly is clear concerning the effect of felony convictions that occurred prior to the effective date of this section, where the general assembly clearly intended to exclude from the ranks of professional bail bondsmen persons who have been convicted of a felony or have served a sentence therefor within ten years from the date of application for renewal. *Ficarra v. Dept. of Reg. Agencies*, 849 P.2d 6 (Colo. 1993).

**Suspension of license.** This section contemplates mere suspension of a license, rather than

nonrenewal, as a possible alternative when a licensee, for example, engaged in a dishonest, though relatively harmless practice in conducting business, but not when proceedings are initiated as a result of a decision of the division of insurance not to renew a license because the applicant for renewal has incurred a felony conviction or has served a sentence thereupon within the past ten years. *Ficarra v. Dept. of Reg. Agencies*, 849 P.2d 6 (Colo. 1993).

**Public policy considerations in determining constitutionality of statute.** In light of the strong public policy interest involved and the position of trust held by professional bail bondsmen, the general assembly could rationally conclude that those who have not served sentences upon felony convictions within the last ten years are most likely to safely and honestly carry out the duties of a professional bail bondsmen, and that the public interest at stake in the operation of the bail bond system overrides any private expectation at stake in the renewal of a professional bail bondsmen license. *Ficarra v. Dept. of Reg. Agencies*, 849 P.2d 6 (Colo. 1993).

**10-23-107. Unlicensed practice - penalties.** A person who acts or attempts to act as a professional cash-bail agent or cash-bonding agent and who is not registered as such under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Upon conviction, the court shall require the person to disgorge any profits from acting as a professional cash-bail agent or cash-bonding agent and forward the profits to the state treasurer, who shall deposit the moneys in the general fund.



**Source:** L. 2012: Entire article added with relocations, (HB 12-1266), ch. 280, p. 1522, § 41, effective July 1.

**Editor's note:** This section is similar to former § 12-7-109 (3).

**10-23-108. Bail bond documents - requirements - rules.** (1) The professional cash-bail agent or cash-bonding agent who posts a bail bond with the court on behalf of a defendant shall ensure that the following documents comply with the following provisions:

- (a) An indemnity agreement must:
    - (I) Be in writing;
    - (II) Be signed by the professional cash-bail agent or cash-bonding agent;
    - (III) Be signed by the defendant or indemnitor;
    - (IV) Set forth the amount of bail set in the case, the name of the defendant released on the bail bond, the court case number if available, the court where the bond is executed, the premium charged, the amount and type of collateral held by the professional cash-bail agent or cash-bonding agent, and the conditions under which the collateral is returned;
    - (V) Contain documentation that the indemnitor has received copies of signed and dated disclosure forms; and
    - (VI) If the defendant or indemnitor is illiterate or does not read English, contain a note on the indemnity agreement that the agent or a third party has read or translated the agreement to the defendant or indemnitor and be affixed with an affidavit to the indemnity agreement attesting that the document was translated;
  - (b) A promissory note must be:
    - (I) In writing;
    - (II) Signed by the professional cash-bail agent or cash-bonding agent; and
    - (III) Signed by the defendant or indemnitor;
  - (c) A collateral receipt must:
    - (I) Be dated;
    - (II) Be in writing;
    - (III) Be signed by the professional cash-bail agent or cash-bonding agent;
    - (IV) Be signed by the defendant or indemnitor;
    - (V) Be prenumbered;
    - (VI) Contain a full description of the collateral, including the condition of the collateral at the time it is taken into custody; and
    - (VII) Set forth the amount of bail set in the case, the name of the defendant released on the bail bond, the court case number, the court where the bond is executed, the premium charged, the amount and type of collateral held by the agent, and the conditions under which the collateral is returned;
  - (d) A bail bond revocation request must be:
    - (I) Dated;
    - (II) In writing;
    - (III) Signed by the professional cash-bail agent or cash-bonding agent; and
    - (IV) Signed by the defendant or indemnitor.
- (2) (a) Before accepting consideration, the professional cash-bail agent or cash-bonding agent shall commit to writing, sign, date, and obtain the defendant's or indemnitor's signature on an arrangement for the payment of all or part of the premium, commission, or fee, including the payment schedule. The signature of the professional cash-bail agent or cash-bonding agent is not an obligation to pay any debt owed to a lender. To be enforceable, interest and financial charges on any unpaid premium must comply with the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S.
- (b) Before accepting consideration or taking collateral, the professional cash-bail agent or cash-bonding agent shall provide, in a form prescribed by the commissioner, a disclosure statement to each defendant and indemnitor detailing the terms of the bail bond.
- (3) (a) A professional cash-bail agent or cash-bonding agent who accepts consideration for a bail bond or undertaking shall, for each payment received, provide to the person tendering payment a prenumbered, signed receipt containing the following:

- (I) The date;
  - (II) The defendant's name;
  - (III) A description of the consideration and amount of money received;
  - (IV) The purpose for which it was received;
  - (V) The penal sum of the bail bond;
  - (VI) The name of the person tendering payment; and
  - (VII) The terms under which the money or other consideration is released.
- (b) The professional cash-bail agent or cash-bonding agent shall provide the person tendering payment a signed and dated receipt for each premium payment listing the amount paid.
- (4) The professional cash-bail agent or cash-bonding agent shall prepare or execute separate agreements and documents for each time the agent posts a bail bond with the court. The agent shall give the indemnitor a copy of each document executed in the course of the bail bond transaction.
- (5) For three years after the date of discharge of a bail bond and return of any collateral or proof of notice to the defendant or indemnitor that any promissory note has been satisfied, the professional cash-bail agent or cash-bonding agent shall keep at the agent's business, copies of each receipt, indemnity agreement, bond, disclosure statement, payment plan, bond revocation request, or other document or information related to the bond transaction and shall make these documents available for inspection by the commissioner or the commissioner's authorized representative during normal business hours.
- (6) The indemnitor may be the defendant.
- (7) The commissioner may examine the business practices, books, and records of any professional cash-bail agent or cash-bonding agent as often as the commissioner deems appropriate.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1522, § 41, effective July 1.

**10-23-109. Business practices - price limits - collateral.** (1) A professional cash-bail agent or cash-bonding agent shall not charge a premium or commission of more than the greater of fifty dollars or fifteen percent of the amount of bail furnished. A professional cash-bail agent or cash-bonding agent shall not assess fees for any bail bond posted by the agent with the court unless the fee is for payment of a bail bond filing charged by a court or law enforcement agency, the fee is for the actual cost of storing collateral in a secure, self-service public storage facility, or the fee is for premium financing.

(2) If a professional cash-bail agent or cash-bonding agent has issued a disclosure statement in accordance with section 10-23-108 (2) (b), the agent may use collateral received from the defendant or indemnitor to secure the following obligations:

- (a) Compliance with the bond issued on behalf of the principal;
- (b) Any balance due on the premium, commission, or fee for the bail bond; and
- (c) Any actual costs incurred by the professional cash-bail agent or cash-bonding agent as a result of issuing the bail bond.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1525, § 41, effective July 1.

#### ANNOTATION

**No standing to bring action enjoining release of criminal defendants.** Bail bondsmen have no legal interest in bail procedures formulated by a county court decision so as to confer standing on them to bring an action for an

injunctive order prohibiting the county court from releasing criminal defendants pursuant to such pretrial release program. *Wimberly v. Ettenberg*, 194 Colo. 163, 570 P.2d 535 (1977) (decided under former law).



**10-23-110. Repeal - review of functions.** This article is repealed, effective September 1, 2017. Prior to the repeal, the licensing functions of the commissioner and the division shall be reviewed as provided for in section 24-34-104, C.R.S.

**Source: L. 2012:** Entire article added with relocations, (HB 12-1266), ch. 280, p. 1525, § 41, effective July 1.

**Editor's note:** This section is similar to former § 12-7-112.

## **TITLE 11**

# **FINANCIAL INSTITUTIONS**



THE  
FIVE  
MOUNTAINS

# TITLE 11

## FINANCIAL INSTITUTIONS

**Cross references:** For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the “Money Transmitters Act”, see article 52 of title 12; for the “Unclaimed Property Act”, see article 13 of title 38.

### BANKS AND INDUSTRIAL BANKS

#### Banking Code

- Art. 1. General Provisions (Repealed).
- Art. 2. Division of Banking (Repealed).
- Art. 3. Organization and Corporate Functions (Repealed).
- Art. 4. Merger, Consolidation, Conversion, and Sale of Assets (Repealed).
- Art. 5. Liquidation - Dissolution - Reorganization (Repealed).
- Art. 6. Banking Practices (Repealed).
- Art. 6.3. Holding Companies (Repealed).
- Art. 6.4. Acquisition of Control of Banks and Bank Holding Companies (Repealed).
- Art. 6.5. Electronic Funds Transfers (Repealed).
- Art. 7. Reserves - Loans - Investments (Repealed).
- Art. 8. Property - Sales - Borrowing - Signature Guaranty (Repealed).
- Art. 9. Safe Deposit and Safekeeping Facilities (Repealed).
- Art. 10. Fiduciary Business (Repealed).
- Art. 10.5. Public Deposit Protection, 11-10.5-101 to 11-10.5-112.
- Art. 11. Criminal Offenses (Repealed).

#### General Financial Provisions

- Art. 20. State Bank Commissioner - Duties - Powers (Repealed).
- Art. 21. Liquidation (Repealed).

#### Industrial Banks

- Art. 22. Industrial Banks (Repealed).

#### Trust Companies and Trust Funds

- Art. 23. Trust Company Act (Repealed).
- Art. 24. Common Trust Funds, 11-24-101 to 11-24-107.

### BRANCH INSTITUTIONS

- Art. 25. Financial Institutions - Operation of Branches - Organizational and Operational Equality (Repealed).

### CREDIT UNIONS

- Art. 30. Credit Unions - General Provisions, 11-30-101 to 11-30-125.

### MISCELLANEOUS

- Art. 35. Surety Bonds Alternatives, 11-35-101 and 11-35-101.5.
- Art. 36. Small Business Development Credit Corporations (Repealed).
- Art. 37. Colorado Investment Deposits (Repealed).



- Art. 37.5. Foreign Capital Depositories (Repealed).
- Art. 38. Reverse Mortgages, 11-38-101 to 11-38-112.

### SAVINGS AND LOAN ASSOCIATIONS

- Art. 40. Savings and Loan Association Law, 11-40-101 to 11-40-109.
- Art. 41. Organization and Powers, 11-41-101 to 11-41-134.
- Art. 42. Shares and Stock, 11-42-101 to 11-42-125.
- Art. 43. Foreign Savings and Loan Associations, 11-43-101.
- Art. 44. Division of Financial Services, 11-44-101 to 11-44-123.
- Art. 45. Conversion, 11-45-101 to 11-45-103.
- Art. 46. Safe Deposit Facilities, 11-46-101 to 11-46-109.
- Art. 47. Protection of Deposits of Public Moneys, 11-47-101 to 11-47-120.
- Art. 47.5. Savings and Loan Guaranty Act (Repealed).
- Art. 48. Electronic Funds Transfers for Financial Institutions Other Than Banks, 11-48-101 to 11-48-107.

### SECURITIES

#### Fiduciaries and Trusts

- Art. 50. Transfers to Minors, 11-50-101 to 11-50-126.

#### Securities

- Art. 51. Securities, 11-51-101 to 11-51-908.
- Art. 51.5. Investor Protection (Repealed).
- Art. 52. False Statements Concerning Securities (Repealed).
- Art. 53. Colorado Commodity Code, 11-53-101 to 11-53-211.
- Art. 54. Refunding Revenue Securities Law, 11-54-101 to 11-54-119.

### PUBLIC SECURITIES

- Art. 55. Uniform Facsimile Signature of Public Officials Act, 11-55-101 to 11-55-110.
- Art. 56. Public Securities Refunding Act, 11-56-101 to 11-56-117.
- Art. 57. Public Securities, 11-57-101 to 11-57-214.
- Art. 58. Public Securities Information Reporting Act, 11-58-101 to 11-58-108.
- Art. 59. Colorado Municipal Bond Supervision Act, 11-59-101 to 11-59-120.
- Art. 59.3. Interest Rate Exchange Agreements, 11-59.3-101 to 11-59.3-105.
- Art. 59.5. No Federal Preemption Under "Secondary Mortgage Market Enhancement Act of 1984", 11-59.5-101.

### RECOVERY AND REINVESTMENT FINANCE ACT

- Art. 59.7. Colorado Recovery and Reinvestment Finance Act of 2009, 11-59.7-101 to 11-59.7-114.

### U.S. AGENCY OBLIGATIONS

- Art. 60. U.S. Agency Obligations, 11-60-101 to 11-60-104.
- Art. 61. Legal Tender, 11-61-101.

### HOSPITAL AND HEALTH CARE TRUSTS

- Art. 70. Hospital and Health Care Trusts, 11-70-101 to 11-70-107.

**COMPLIANCE REVIEW DOCUMENTS**

Art. 71. Confidentiality of Compliance Review Documents, 11-71-101 to 11-71-103.

**BANKS AND INDUSTRIAL BANKS****Colorado Banking Code**

- Art. 101. General Provisions, 11-101-101 to 11-101-401.
- Art. 102. Division of Banking, 11-102-101 to 11-102-508.
- Art. 103. Organization and Corporate Functions, 11-103-101 to 11-103-810.
- Art. 104. Holding Companies, 11-104-101 to 11-104-203.
- Art. 105. Banking Practices, 11-105-101 to 11-105-606.
- Art. 106. Fiduciary Business, 11-106-101 to 11-106-106.
- Art. 107. Criminal Offenses, 11-107-101 to 11-107-111.
- Art. 108. Industrial Banks, 11-108-101 to 11-108-803.
- Art. 109. Trust Companies, 11-109-101 to 11-109-1007.

**BANKS AND INDUSTRIAL BANKS****Banking Code**

**Editor's note:** (1) Articles 1 to 10 were numbered as articles 1 to 7 and 9 to 11 of chapter 14, C.R.S. 1963. For amendments to these articles prior to their repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of articles 1 to 10 were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's note following each section in said articles 101 to 109.

**ARTICLE 1****General Provisions**

**11-1-101 to 11-1-106. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 2****Division of Banking**

**11-2-101 to 11-2-122. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 3****Organization and Corporate Functions**

**11-3-101 to 11-3-123. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.



**ARTICLE 4****Merger, Consolidation, Conversion, and Sale of Assets****11-4-101 to 11-4-110. (Repealed)****Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.**ARTICLE 5****Liquidation - Dissolution - Reorganization****11-5-101 to 11-5-109. (Repealed)****Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.**ARTICLE 6****Banking Practices****11-6-101 to 11-6-113. (Repealed)****Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.**ARTICLE 6.3****Holding Companies****11-6.3-101. (Repealed)****Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** This article was added in 1985. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**ARTICLE 6.4****Acquisition of Control of Banks and  
Bank Holding Companies****11-6.4-101 to 11-6.4-104. (Repealed)****Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** This article was added in 1988. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**ARTICLE 6.5****Electronic Funds Transfers**

**Cross references:** For electronic funds transfers for financial institutions other than banks, see article 48 of this title.

**11-6.5-101 to 11-6.5-111. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** This article was added in 1977. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**ARTICLE 7****Reserves - Loans - Investments****11-7-100.3 to 11-7-112. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 8****Property - Sales - Borrowing - Signature Guaranty****11-8-101 to 11-8-106. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 9****Safe Deposit and Safekeeping Facilities****11-9-101 to 11-9-107. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 10****Fiduciary Business****11-10-101 to 11-10-107. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**ARTICLE 10.5****Public Deposit Protection**

**Editor's note:** (1) This article was added in 1975. This article was repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

(2) Current provisions concerning the "Colorado Banking Code" are located in articles 101 to 109 of this title.

11-10.5-101.	Short title.	11-10.5-104.	Applicability of article.
11-10.5-102.	Legislative declaration.	11-10.5-105.	Authority of banking board.
11-10.5-103.	Definitions.	11-10.5-106.	Designation as eligible public



	depository - acceptance of provisions.	11-10.5-110.	Procedures when event of default occurs.
11-10.5-107.	Eligible collateral - uninsured public deposits.	11-10.5-111.	Public funds to be deposited only in eligible public depositories - responsibilities of official custodians and eligible public depositories - penalty.
11-10.5-108.	Collateral - where held - right of substitution - income derived.		
11-10.5-109.	Verification of collateral held - reports required.	11-10.5-112.	Annual fees and assessments.

**11-10.5-101. Short title.** This article shall be known and may be cited as the "Public Deposit Protection Act".

**Source:** L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

**Editor's note:** This section is similar to former § 11-10.5-101 as it existed prior to 1989.

**11-10.5-102. Legislative declaration.** (1) The general assembly hereby declares that the purpose of this article is to serve the taxpayers and the citizens of Colorado by establishing standards and procedures to ensure the preservation and protection of all public funds held on deposit by a bank that are either not insured by or are in excess of the insured limits of federal deposit insurance, and to ensure the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits.

(2) The general assembly further finds, determines, and declares that the protection of public funds on deposit in banks is a matter of statewide concern and importance and that as such:

(a) The provisions of this article shall prevail over any local government ordinance or resolution and over any home rule or territorial charter provision in conflict therewith; and

(b) The requirement that a national bank comply with the provisions of this article neither encroaches upon the prerogatives of a nationally chartered bank nor exceeds the authority of the state of Colorado.

**Source:** L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

**Editor's note:** This section is similar to former § 11-10.5-102 as it existed prior to 1989.

**11-10.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Aggregate uninsured public deposits" means the total amount of cash, checks, or drafts on deposit at the close of a business day for credit to the official custodian accounts in an eligible public depository, and which are either not insured by or are in excess of the insurable limits of federal deposit insurance.

(2) "Bank" means any bank organized or chartered under this article and articles 101 to 109 of this title or any bank organized or chartered under chapter 2 of title 12 of the United States Code. For purposes of section 11-10.5-104 and 11-10.5-111 (1) only, the definition of "bank" also includes those banks chartered under the laws of other states.

(3) "Banking board" means the banking board established by section 11-102-103.

(4) "Defaulting depository" means any eligible public depository to which an event of default has occurred.

(5) "Eligible collateral" means, with respect to the securing of uninsured public funds, those instruments or obligations approved to be used for such purposes by the banking board pursuant to the provisions of section 11-10.5-107.

(6) "Eligible public depository" means any bank which has been designated as an eligible public depository by the banking board.

(7) "Event of default" means the issuance of an order by a supervisory authority or a receiver which restrains an eligible public depository from paying its deposit liabilities.

(8) "Federal deposit insurance" means deposit insurance or guarantees provided by the federal deposit insurance corporation or any successor agency thereto.

(9) “Official custodian” means:

(a) A designee with plenary authority, including control over public funds of a public unit which the official custodian is appointed to serve. For purposes of this paragraph (a), “control” includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of plenary authority over the public funds of a public unit requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(b) A designee, other than a designee described in paragraph (a) of this subsection (9), with authority, including control, over public funds of an entity, including the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, school district, special district, or other political subdivision of the state of Colorado, including any institution of higher education; any institution, department, agency, instrumentality, or authority of any of the foregoing, including any county or municipal housing authority; any local government investment pool organized pursuant to part 7 of article 75 of title 24, C.R.S.; any public entity insurance pool organized pursuant to state statute; any public body corporate created or established under the constitution of the state of Colorado or any state statute; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. For purposes of this paragraph (b), “control” includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of authority over such public funds requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(10) (a) “Political subdivision” includes any subdivision or any principal department of a public unit:

(I) The creation of which subdivision or principal department has been expressly authorized by state statute;

(II) To which some functions of government have been delegated by state statute; and

(III) To which funds have been allocated by ordinance or state statute for its exclusive use and control.

(b) “Political subdivision” also includes drainage, irrigation, navigation, improvement, levee, sanitary, school, and power districts and bridge and port authorities and any other special district created by state statute or compact between the state of Colorado and one or more states.

(c) “Political subdivision” does not include subordinate or nonautonomous divisions, agencies, or boards within principal departments of a public unit.

(11) “Public deposits” means all public funds on deposit in an eligible public depository in any form, whether time, savings, or demand.

(12) “Public funds” means all funds of a public unit and all funds of any entity referred to in paragraph (b) of subsection (9) of this section.

(13) “Public unit” means the state of Colorado, any county, city and county, city, or municipality, including any home rule city or town or territorial charter city, or any political subdivision thereof.

**Source:** L. 89: Entire article R&RE, p. 594, § 1, effective September 1. L. 91: (2) amended, p. 650, § 8, effective May 1. L. 2003: (3) amended, p. 1206, § 5, effective July 1. L. 2004: (2) amended, p. 324, § 9, effective April 7; (2) amended, p. 1190, § 17, effective August 4.

**Editor’s note:** (1) This section is similar to former § 11-10.5-103 as it existed prior to 1989.

(2) Subsection (2) was amended in House Bill 04-1110. Those amendments were superseded by the amendment of subsection (2) in Senate Bill 04-239.



**11-10.5-104. Applicability of article.** The provisions of this article shall apply to all banks which elect to become eligible public depositories. No bank shall hold any public funds unless such bank has been designated as an eligible public depository pursuant to the provisions of this article.

**Source: L. 89:** Entire article R&RE, p. 595, § 1, effective September 1.

**11-10.5-105. Authority of banking board.** The banking board shall have the authority to implement any provision of this article by order and by rule and regulation and may obtain restraining orders and injunctions to prevent violation of or to enforce compliance with the provisions of this article and the orders and rules and regulations issued under such provisions. The authority of the banking board shall be liberally construed to ensure that the purposes of this article are properly implemented.

**Source: L. 89:** Entire article R&RE, p. 595, § 1, effective September 1.

**Editor's note:** This section is similar to former § 11-10.5-104 as it existed prior to 1989.

**11-10.5-106. Designation as eligible public depository - acceptance of provisions.**  
(1) No bank shall be a public depository or shall hold public funds without first being designated as an eligible public depository by the banking board pursuant to the provisions of this section.

(2) No bank shall be designated an eligible public depository unless the bank meets the following criteria:

(a) The deposits of such bank are insured or guaranteed by federal deposit insurance;  
(b) The bank is in compliance with the capital standards established by the banking board; and

(c) The bank agrees in writing to abide by all regulatory directives, reporting requirements, examination requirements, and other criteria established for the administration and enforcement of the provisions and purposes of this article.

(3) (a) (I) Any bank which meets the criteria established in subsection (2) of this section and which desires to accept and hold public funds on and after September 1, 1989, shall file a written application with the banking board requesting designation as an eligible public depository. The request shall be signed by an executive officer of the bank and shall state that the bank agrees to abide by the provisions of this article and all rules and regulations promulgated by the banking board for the administration and enforcement of the provisions of this article.

(II) If the bank requesting such designation was an eligible public depository under applicable law in effect prior to September 1, 1989, and desires to continue to be an eligible public depository subject to the provisions of this article, it shall file the required written application within thirty days following August 1, 1989. If the banking board has no reason to believe that the bank would fail to meet the criteria or fail to follow the provisions of this article, it may designate such bank as an eligible public depository and issue an appropriate certificate evidencing such designation. Such immediate designation is provided for the convenience of the banking board in order to expedite transition from laws governing the protection of public funds in effect prior to September 1, 1989, and is not to be construed as granting a right or privilege to any bank to be designated as an eligible public depository.

(III) Any bank which was not an eligible public depository under applicable law in effect prior to September 1, 1989, or any bank which was granted a charter on or after said date, or any bank which has had its certificate as an eligible public depository withdrawn or revoked by either the banking board or the commissioner may at any time make written application to the banking board for designation as an eligible public depository. Such application shall be made on such forms or in such format as may be prescribed by the banking board. Upon submittal, the application shall contain all required information and shall be accompanied by a fee to be determined by the banking board. The banking board shall review the application and, not more than sixty days from the date that the application

was submitted, shall either grant and issue or deny issuance of a certificate evidencing such designation. The banking board may extend the sixty-day review period for not more than thirty additional days.

(b) (I) Designation as an eligible public depository shall not constitute either a right or a license, and such designation may be revoked, suspended, or placed under restrictions, limitations, or other conditions by the banking board if the board determines that the eligible public depository has failed to comply with the provisions of this article or any rule and regulation promulgated by the banking board for the administration or enforcement of this article or with the provisions of any order of the banking board.

(II) Once granted, designation as an eligible public depository may be retained by the bank to which it was granted unless the banking board acts to suspend, revoke, or otherwise limit the designation. Designation is unique to the bank to which it was granted and may not be sold or transferred to another bank. In the event that a bank designated as an eligible public depository is acquired or merged with another entity, the banking board shall review the continuation of such designation under either this paragraph (b) or paragraph (a) of this subsection (3).

**Source:** L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

**Editor's note:** This section is similar to former § 11-10.5-105 as it existed prior to 1989.

**11-10.5-107. Eligible collateral - uninsured public deposits.** (1) The banking board shall establish by rule and regulation a list of approved instruments and obligations to be used as eligible collateral by an eligible public depository in order to comply with the provisions of this section. As part of its findings, the banking board shall determine that each approved obligation or instrument meets at least the following criteria:

(a) The obligation or instrument is characterized by attributes of safety, liquidity, and soundness meeting the purposes of this article for the preservation and protection of public funds;

(b) The obligation or instrument, with respect to its market value, shall be marketable or convertible into cash within such time periods as shall be prescribed by the banking board to assure that any claim made pursuant to section 11-10.5-110 is fully and promptly paid;

(c) The standards and relevant factors required to establish and evaluate the current market value of the obligation or instrument are prescribed by the banking board at the time the obligation or instrument is approved for use as eligible collateral, which standards and relevant factors may include statistical standards for deviations from the original market value assigned at the time of approval for use that would result in an automatic deletion from the list of approved eligible collateral;

(d) The market value of each obligation or instrument is verified at least monthly, unless the banking board prescribes a different period for a particular obligation or instrument;

(e) The banking board has at its disposal adequate resources to monitor and evaluate the market value of the obligation or instrument; and

(f) The obligation or instrument satisfies such other criteria as the banking board may establish.

(2) (a) Except as provided in subsection (4) of this section, the banking board shall not treat any eligible public depository differently than any other eligible public depository.

(b) In promulgating the list of eligible collateral pursuant to subsection (1) of this section, the banking board, within the bounds of safety and soundness, shall not establish market values or other evaluation criteria which are disproportionately more restrictive for banks than comparable market values or evaluation criteria for any other class of eligible public depositories operating under this article or any other state law. It is the intent of the general assembly that, to the extent practicable, competitive parity among eligible public depositories which existed under applicable law in effect prior to September 1, 1989, should be maintained.



(3) The banking board shall establish procedures to notify each eligible public depository in a timely manner of the obligations and instruments that have been approved for use as eligible collateral and of obligations and instruments that have been deleted from the list of approved eligible collateral. Any eligible public depository utilizing as collateral an obligation or instrument which has been deleted from the list of approved eligible collateral shall, within three business days of receiving notice of the deletion or within such longer period as prescribed by the banking board, remove it from its portfolio of collateral and substitute sufficient other obligations or instruments that are approved for use as eligible collateral to properly secure public funds as required by this article.

(4) (a) The banking board shall by rule establish criteria and procedures for reducing or removing any uninsured public funds deposited in an eligible public depository if said depository fails to comply with the capital or safety and soundness standards established by the banking board.

(b) The banking board shall require an eligible public depository to increase, substitute, add to, or modify the amount or type of eligible collateral held to secure any uninsured public funds so that the collateral is adequate to fully protect the public funds if the capital or financial condition of the eligible public depository fails to comply with the capital or safety and soundness standards established by the banking board. The banking board shall establish such procedures as may be necessary to ensure that all collateral held pursuant to an action taken under this paragraph (b) is characterized by the highest degree of marketability and liquidity so that, in the event of default, all public deposits may be promptly and fully repaid.

(5) As an ongoing requirement of designation as an eligible public depository, any such depository shall pledge collateral having a market value in excess of one hundred two percent of the aggregate uninsured public deposits.

(6) An eligible public depository shall remove any obligation or instrument pledged as eligible collateral if the banking board determines that the obligation or instrument has failed in some manner to meet the criteria required by this section and shall substitute another obligation or instrument of eligible collateral that is satisfactory to the banking board.

**Source: L. 89:** Entire article R&RE, p. 597, § 1, effective September 1. **L. 2009:** (4) amended, (HB 09-1053), ch. 159, p. 687, § 2, effective August 5.

**11-10.5-108. Collateral - where held - right of substitution - income derived.**

(1) (a) Eligible collateral shall be held as provided in this article or by rules and regulations of the banking board. Eligible collateral shall be held in the custody of any bank, including a federal reserve bank, or any depository trust company which has been approved by the banking board to hold eligible collateral and is supervised by the banking board, or an equivalent governmental agency responsible for the regulation of banks in the state in which such bank or depository trust company is located.

(b) An eligible public depository which has its own trust department may make application to the banking board to be allowed to segregate its required eligible collateral from the other assets of the eligible public depository and to hold such collateral in its own trust department under such conditions as the banking board shall prescribe by rule and regulation. The banking board may require an eligible public depository that is holding its own eligible collateral in its own trust department to cease doing so and to have the eligible collateral held by some other entity authorized to hold collateral by paragraph (a) of this subsection (1). Any eligible public depository which holds collateral for any other eligible public depository and which is granted permission by the banking board to hold its own collateral as well shall at all times keep the collateral held for each such eligible public depository segregated.

(2) Under circumstances where eligible collateral is maintained as required by this article, and where such eligible collateral is not held by the eligible public depository's own trust department, each eligible public depository shall provide in a written deposit or pledge agreement between the said eligible public depository and the custodian of the collateral, or

in such other manner as shall be prescribed by the banking board by rule and regulation, that:

(a) In the event of default or insolvency of the eligible public depository for which the collateral is held, the custodian shall surrender such collateral to the banking board; and

(b) The custodian shall make available to the banking board the eligible collateral and any books, records, and papers pertaining thereto for any examination or other reason necessary for the administration of this article.

(3) An eligible public depository may at any time make substitutions of eligible collateral maintained or pledged for the purposes of this article pursuant to collateral substitution procedures established by the banking board and shall at all times be entitled to collect and retain all income derived from such collateral without restriction. The privilege granted under this subsection (3) may be suspended or revoked by the banking board if the eligible public depository has become the subject of increased regulatory oversight as a result of its failure to maintain capital standards required by the banking board for the holding of public funds.

**Source:** L. 89: Entire article R&RE, p. 598, § 1, effective September 1. L. 91: (1) and (3) amended, p. 650, § 9, effective May 1.

**Editor's note:** This section is similar to former § 11-10.5-109 as it existed prior to 1989.

**11-10.5-109. Verification of collateral held - reports required.** (1) Each eligible public depository shall submit reports at least monthly to the banking board in such format as the banking board may prescribe. Such report shall demonstrate that the eligible public depository is in full compliance with the provisions of this article. In addition, each eligible public depository shall submit copies of its quarterly call reports to the banking board thirty days after the close of each fiscal quarter.

(2) The board of directors of an eligible public depository shall cause an annual audit to be completed at least annually, but at intervals of not more than fifteen months, by an independent accounting firm composed of certified public accountants or a director's examination by a public accountant or any other independent person or persons as determined by the banking board. The banking board shall adopt regulations regarding the qualifications of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's regulations shall also establish the scope of such directors' examinations which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. Such independent audit or directors' examination shall be completed and submitted to the banking board within the time lines the banking board requires. Such audits or directors' examinations shall include, but shall not be limited to, the following information:

- (a) The official custodian on whose behalf any public funds are held;
- (b) The name and address of each such official custodian;
- (c) The amount of public funds on deposit for each such custodian;
- (d) The amount of federal deposit insurance coverage for each such official custodian;
- (e) The eligible collateral pledged for aggregate uninsured public deposits and the market value of such eligible collateral; and
- (f) Any other information which may be required by the banking board by rule and regulation.

(3) The banking board may examine all public deposits held by and all eligible collateral required to be maintained by an eligible public depository, and all books, records, and papers pertaining thereto.

(4) Each eligible public depository shall be assessed reasonable expenses by the banking board to meet the costs of any examinations made in accordance with the provisions of this section.



**Source:** L. 89: Entire article R&RE, p. 599, § 1, effective September 1. L. 90: IP(2) amended, p. 667, § 35, effective June 7.

**Editor's note:** This section is similar to former §§ 11-10.5-109.5 and 11-50-111 as they existed prior to 1989.

**11-10.5-110. Procedures when event of default occurs.** (1) When the banking board has determined that an eligible public depository has experienced an event of default, the banking board shall proceed in the following manner:

(a) The board shall seize and take possession of all eligible collateral belonging to or held on behalf of the defaulting depository from wherever such eligible collateral is held.

(b) The board shall ascertain the aggregate amounts of public funds held by the defaulting depository as disclosed by the records of such depository. The board shall determine for each official custodian for whom public funds are held by the defaulting depository the accounts and the amount of federal deposit insurance that is available for each account. It shall then determine for each such official custodian the amount of uninsured public funds and the eligible collateral that is pledged to secure such funds. Upon completion of this analysis, the board shall provide each such official custodian with a statement that reports the amount of public funds held by the defaulting depository in his behalf, the amount that may be protected by federal deposit insurance, and the amount that is safeguarded by eligible collateral as required by this article. Each such official custodian shall verify this information from his records within ten working days after receiving the report and information from the banking board.

(c) Upon receipt of a verified report from such official custodian and if the defaulting eligible public depository is to be liquidated or otherwise removed from status as an eligible public depository, the banking board shall proceed to liquidate all eligible collateral held for the safeguarding of public deposits and shall repay each official custodian for the uninsured public deposits held by the depository in his behalf.

(2) In the event that a federal deposit insurance agency is appointed and acts as liquidator or receiver of any eligible public depository under state or federal law, those duties under this article that are specified to be performed by the banking board in the event of default may be delegated to and performed by the said federal deposit insurance agency. Any liquidation occurring under the provisions of this section shall conform to the procedures established in section 11-103-804.

**Source:** L. 89: Entire article R&RE, p. 600, § 1, effective September 1. L. 2003: (2) amended, p. 1206, § 6, effective July 1.

**Editor's note:** This section is similar to former § 11-10.5-113 as it existed prior to 1989.

**11-10.5-111. Public funds to be deposited only in eligible public depositories - responsibilities of official custodians and eligible public depositories - penalty.**

(1) Any official custodian may deposit public funds in any bank which has been designated by the banking board as an eligible public depository. It is unlawful for an official custodian to deposit public funds in any bank other than one that has been so designated.

(2) Each official custodian shall inform an eligible public depository that the public funds on deposit are subject to the provisions of this article before entering into a depository agreement with the eligible public depository. It is the responsibility of the official custodian to maintain documents or other verification necessary to properly identify the public funds which are subject to the provisions of this article.

(3) The division, in consultation with the state treasurer and the state controller, shall establish the necessary controls to ensure the proper identification of public depository accounts.

(4) (a) An official custodian who acted in good faith in selecting, designating, or approving any eligible public depository for the deposit of public funds shall not be liable

for any loss of public funds deposited in an eligible public depository if such loss is caused by the occurrence of an event of default of such eligible public depository.

(b) Any official custodian who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, which fine shall be mandatory and may not be reimbursed nor paid by the public unit. Upon any such conviction, the court may adjudge that the official custodian be removed from public office.

(c) Any director, bank officer, or manager who knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than two thousand dollars, which fine shall be mandatory.

(5) It is unlawful for any director, bank officer, or manager of any bank to accept or receive any public funds while such bank is insolvent or while under verbal or written order from the banking board not to accept or receive any public funds.

(6) Notwithstanding any other provision of this section to the contrary, nothing shall be construed to prevent a bank which is an eligible public depository operating pursuant to the provisions of this article from being or acting as an agent on behalf of any official custodian for the purposes of making investments as authorized by part 6 of article 75 of title 24, C.R.S. Any such bank shall maintain such accounting records as are necessary to readily distinguish between the activities authorized by said part 6 and the purposes of the public deposit protection requirements imposed upon it as a condition of being an eligible public depository. The banking board may promulgate such rules and regulations as it deems necessary to ensure that the activities authorized under part 6 of article 75 of title 24, C.R.S., and the protection of public funds pursuant to this article are not commingled.

**Source:** L. 89: Entire article R&RE, p. 601, § 1, effective September 1. L. 2001: (3) amended, p. 155, § 1, effective March 28.

**Editor's note:** This section is similar to former §§ 11-10.5-118, 11-10.5-119, and 11-10.5-121 as they existed prior to 1989.

**11-10.5-112. Annual fees and assessments.** (1) There is hereby created in the state treasury the public deposit administration fund. The fund shall consist of moneys required to be credited to the fund pursuant to subsection (2) of this section and all interest earned on the investment of the moneys in the fund. Any such interest shall be credited at least annually to said fund. Moneys in the fund shall be subject to appropriation by the general assembly to the banking board to be used solely for the administration and enforcement of the provisions of this article. No moneys shall be appropriated from the general fund for payment of any expenses incurred under this section, and no such expenses shall be charged against the state.

(2) Every eligible public depository shall be assessed an annual fee in an amount established by the banking board for the costs of enforcement and administration of this article. Such fees shall fairly and equitably apply to all eligible public depositories calculated according to the proportion of aggregate public funds that each depository holds in relation to the total of all aggregate public deposits held by all eligible public depositories for each annual period for which they were eligible public depositories. The banking board shall transmit such fees to the state treasurer who shall credit the same to the public deposit administration fund.

(3) All fees assessed against an eligible public depository in accordance with the provisions of section 11-10.5-109 (4) shall be transmitted to the state treasurer who shall credit the same to the public deposit administration fund.

(4) In setting fees, the banking board shall apply the standards imposed on boards and commissions of the division of professions and occupations in the department of regulatory agencies for determining the amount of fees pursuant to the provisions of section 24-34-105 (2) (b) and (2) (c), C.R.S.



**Source:** L. 89: Entire article R&RE, p. 602, § 1, effective September 1. L. 90: (2) amended, p. 667, § 36, effective June 7.

**Editor's note:** This section is similar to former § 11-10.5-120 as it existed prior to 1989.

## ARTICLE 11

### Criminal Offenses

#### 11-11-101 to 11-11-110. (Repealed)

**Source:** L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** (1) This article was numbered as article 12 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

## General Financial Provisions

## ARTICLE 20

### State Bank Commissioner - Duties - Powers

#### 11-20-101 to 11-20-118. (Repealed)

**Source:** L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** (1) This article was numbered as article 13 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

## ARTICLE 21

### Liquidation

#### 11-21-101 to 11-21-123. (Repealed)

**Source:** L. 81: Entire article repealed, p. 611, § 36, effective July 1; entire article repealed, p. 2023, § 8, effective July 1.

**Editor's note:** This article was numbered as article 14 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For liquidation procedure under the "Colorado Banking Code", see article 103 of this title; for provisions concerning liquidation procedures for industrial banks, see part 6 of article 108 of this title.

## Industrial Banks

### ARTICLE 22

#### Industrial Banks

**11-22-101 to 11-22-706. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** (1) This article was numbered as article 17 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

## Trust Companies and Trust Funds

### ARTICLE 23

#### Trust Company Act

**11-23-101 to 11-23-125. (Repealed)**

**Source: L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor's note:** (1) This article was numbered as article 20 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

### ARTICLE 24

#### Common Trust Funds

**Cross references:** For fiduciary powers of banks, see article 106 of this title.

11-24-101.	Short title.	11-24-104.	Court accountings.
11-24-102.	Common trust funds established and operated.	11-24-105.	Uniformity of interpretation.
11-24-103.	Exclusive management and control.	11-24-106.	Existing fiduciary relationships.
		11-24-107.	Fiduciary defined.

**11-24-101. Short title.** This article shall be known and may be cited as the "Uniform Common Trust Fund Act".

**Source: L. 47:** p. 894, § 5. **CSA:** C. 18, § 177. **CRS 53:** § 14-10-5. **C.R.S. 1963:** § 14-18-5.

**11-24-102. Common trust funds established and operated.** Any bank or trust company qualified to act as fiduciary in this state may establish and operate, alone or jointly with another bank or trust company qualified to act as fiduciary in this state, common trust funds for the purpose of furnishing investments to itself as fiduciary, to itself and others as cofiduciaries, to other banks or trust companies as fiduciaries, or to other banks or trust



companies and others as cofiduciaries. Such fiduciary or cofiduciary may invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. Any person acting as cofiduciary with any such bank or trust company is hereby authorized to consent to the investment in such interests. In determining whether the investment of funds received or held by a bank or trust company as fiduciary in a common trust fund is proper, the bank or trust company may consider the common fund as a whole and shall not be prohibited from making such investment because of any particular asset.

**Source:** L. 47: p. 893, § 1. CSA: C. 18, § 173. CRS 53: § 14-10-1. C.R.S. 1963: § 14-18-1. L. 77: Entire section amended, p. 563, § 1, effective June 9.

**11-24-103. Exclusive management and control.** Any bank or trust company maintaining one or more common trust funds shall have the exclusive management and control of each common trust fund administered by it and the sole right at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the assets comprising same. Notwithstanding any other provision of law, such bank or trust company may deposit investments of a common trust fund, which investments are securities, with a clearing corporation or with a federal reserve bank pursuant to part 5 of article 1 of title 15, C.R.S., for the account of the bank or trust company and such investments shall be deemed for the purposes of this article to be in the custody of such bank or trust company.

**Source:** L. 47: p. 893, § 4. CSA: C. 18, § 176. CRS 53: § 14-10-3. C.R.S. 1963: § 14-18-3. L. 77: Entire section amended, p. 563, § 2, effective June 9.

**11-24-104. Court accountings.** Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but, by application to the district court, it may secure approval of such an accounting on such conditions as the court may establish.

**Source:** L. 47: p. 893, § 2. CSA: C. 18, § 174. CRS 53: § 14-10-2. C.R.S. 1963: § 14-18-2.

**11-24-105. Uniformity of interpretation.** This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Source:** L. 47: p. 893, § 3. CSA: C. 18, § 175. CRS 53: § 14-10-4. C.R.S. 1963: § 14-18-4.

**11-24-106. Existing fiduciary relationships.** This article became effective January 1, 1948, and applies to fiduciary relationships then in existence or thereafter established.

**Source:** L. 47: p. 894, § 8. CSA: C. 18, § 178. CRS 53: § 14-10-6. C.R.S. 1963: § 14-18-6.

**11-24-107. Fiduciary defined.** The word "fiduciary", whenever used in this article, means a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another or others in all matters connected with its undertaking and includes personal representatives [including executors, administrators, administrators with the will annexed (cum testamento annexo), administrators in succession acting under a will (de bonis non), ancillary administrators acting under a will, and ancillary executors], special administrators, guardians, conservators, trustees, whether of express or implied trusts,

custodians under the “Colorado Uniform Transfers to Minors Act” (notwithstanding anything in said act which may be interpreted as contrary to this grant of authority), assignees, receivers, managing agents, as defined in this section, and any other person acting in a similar capacity. “Managing agent” means a fiduciary acting in the fiduciary relationship assumed upon the creation of a relationship which confers investment discretion on the fiduciary, but as to which the technical legal relationship is that of agent and principal.

**Source:** **L. 77:** Entire section added, p. 564, § 3, effective June 9. **L. 84:** Entire section amended, p. 393, § 3, effective July 1.

**Cross references:** For the “Colorado Uniform Transfers to Minors Act”, see article 50 of this title.

## BRANCH INSTITUTIONS

### ARTICLE 25

#### Financial Institutions - Operation of Branches - Organizational and Operational Equality

#### 11-25-101 to 11-25-107. (Repealed)

**Source:** **L. 2003:** Entire article repealed, p. 1051, § 1, effective July 1.

**Editor’s note:** (1) This article was added in 1991. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor’s notes following each section in said articles.

## CREDIT UNIONS

### ARTICLE 30

#### Credit Unions - General Provisions

**Cross references:** For the “Unclaimed Property Act”, see article 13 of title 38.

**Law reviews:** For article, “Arbitrating Lender Liability Claims”, see 18 Colo. Law. 879 (1989).

11-30-101.	Definitions - organization - charter - investigation.	11-30-110.	Credit committee - credit officer.
11-30-101.7.	Hearing procedures for community field of membership credit unions.	11-30-111.	Supervisory committee.
11-30-102.	Bylaws of credit unions.	11-30-112.	Capital.
11-30-103.	Membership.	11-30-113.	Minors.
11-30-103.5.	Branches.	11-30-114.	Rates. (Repealed)
11-30-104.	Powers.	11-30-115.	Power to borrow and loan money.
11-30-105.	Exclusive right to use “credit union” in title.	11-30-116.	Loans.
11-30-106.	Examinations - reports - powers of commissioner.	11-30-117.	Reserves.
11-30-106.5.	Assessment of civil money penalties.	11-30-117.5.	Share insurance required - confidentiality.
11-30-107.	Fiscal year - meetings:	11-30-118.	Dividends.
11-30-108.	Elections.	11-30-118.5.	Prauthorized transfers - credit union must have written authorization. (Repealed)
11-30-109.	Directors and officers - compensation.	11-30-119.	Expulsion or withdrawal of



	members - deceased mem-	11-30-121.	Change in place of business.
	bers.	11-30-122.	Merger.
11-30-120.	Suspension - liquidation -	11-30-123.	Taxation.
	procedures.	11-30-124.	Transfer of functions - con-
11-30-120.5.	Conversion - state to federal		forming of statutes.
	credit union - federal to	11-30-125.	Notice of branch opening and
	state credit union.		closing.

**11-30-101. Definitions - organization - charter - investigation.** (1) (a) A credit union is a cooperative association, incorporated pursuant to this article for the twofold purpose of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

(b) As used in this article:

(I) "Board" means the financial services board, created in section 11-44-101.6.

(I.1) "Commissioner" means the state commissioner of financial services.

(II) "Division" means the division of financial services created in section 11-44-101.

(2) A credit union may be organized in the following manner:

(a) Any eight or more residents of the state of Colorado who meet the membership requirements of section 11-30-103 (2) may execute, in a number of copies to be specified by the commissioner, articles of incorporation setting forth therein the terms by which they agree to be bound. The articles shall state the name and address of the proposed credit union; the names and addresses of the incorporators; the number of shares subscribed by each incorporator; and the term of existence of the corporation, which may be perpetual.

(b) The incorporators shall prepare, in a number of copies to be specified by the commissioner, proposed bylaws for the governing of the credit union, consistent with the provisions of this article, on standard forms approved by the commissioner and shall define therein the proposed eligibility requirements for membership.

(c) The proposed bylaws shall further set forth: The classes of shares which the credit union is authorized to issue; if such shares are to consist of one class only, the par value of each of the shares or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, a statement of the par value of the shares of each such class or that the shares are to be without par value. In addition, if the shares are to be divided into classes, the bylaws shall designate each class and a statement of its preferences, its limitations, and its relative rights with respect to the shares of each other class.

(3) (a) An application in such form as may be prescribed by the commissioner together with the articles of incorporation and the bylaws shall be filed with the commissioner, in a number of copies to be specified by the commissioner, upon the payment of a filing fee, as determined from time to time by the commissioner, to cover the reasonable and necessary expense to the division attributable to such application. Within thirty days after such filing and payment of such fee, the commissioner shall determine whether the same conform to the provisions of this article and whether such a credit union would benefit the members and proposed members thereof, consistent with the purposes of this article, the general character and fitness of the incorporators, and the economic advisability of establishing the proposed credit union. Except for a community charter application, which application shall be submitted to the board for hearing pursuant to section 11-30-101.7, the commissioner may approve or deny an application without notice and hearing.

(b) The commissioner shall make or cause to be made an investigation to determine whether the incorporators and organizers are qualified and whether their qualifications and financial experience are consistent with their responsibilities and duties. An investigation shall also be conducted to determine if an incorporator or organizer has been convicted of any criminal activity. The commissioner may establish by rule the content of such investigations and what, if any, investigations by other agencies or authorities may be treated as substantially equivalent to and accepted in lieu of an investigation by the commissioner.

(4) Upon approval of an application and documents by the commissioner, or by the board with respect to a community charter application, the commissioner shall issue a certificate of approval, in a number of copies equal to the number of copies of the articles

of incorporation required to be filed pursuant to subsection (2) (a) of this section as specified by the commissioner, and attach a copy thereof to each copy of the said articles of incorporation. The incorporators shall then file approved articles with the secretary of state, and a copy of the articles, certified by the secretary of state, shall be filed with the commissioner. The incorporators shall pay to the secretary of state a fee for filing the articles of incorporation and a fee for certifying the copy of articles of incorporation furnished by the incorporators for filing with the commissioner, both fees to be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) After the said certified copy of articles of incorporation have been filed with the commissioner, he shall issue a charter for such credit union, at which time the credit union shall become a body corporate having the powers enumerated in section 7-103-102, C.R.S., except as otherwise provided or limited in this article.

(6) The bylaws approved by the commissioner shall then be adopted by the initial board of directors of the credit union.

**Source:** L. 31: p. 295, § 1. CSA: C. 47, § 1. L. 41: p. 370, § 1. CRS 53: § 38-1-1. C.R.S. 1963: § 38-1-1. L. 67: p. 315, § 1. L. 73: p. 497, § 1. L. 79: (2)(a) amended, p. 414, § 1, effective May 22. L. 83: (2)(a) amended and (2)(c) added, p. 483, § 1, effective July 1; (4) amended, p. 876, § 39, effective July 1. L. 89: (3) amended, p. 608, § 1, effective April 19. L. 90: (1) and (2)(b) amended, p. 1837, § 6, effective May 31. L. 93: (1)(b), (3), and (4) amended, p. 1442, § 1, effective June 6; (5) amended, p. 861, § 27, effective July 1, 1994. L. 94: (3) amended, p. 62, § 1, effective July 1. L. 96: (2)(a), (2)(b), (3)(a), and (4) amended, p. 184, § 1, effective April 8.

#### ANNOTATION

**Law reviews.** For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

**11-30-101.7. Hearing procedures for community field of membership credit unions.** (1) An application for a community field of membership shall be subject to approval by the board after the required notice and hearing requirements in this section are met.

(2) Upon submission by the commissioner, pursuant to section 11-30-101 (3), of a community field of membership application, the board shall hold a public hearing to consider the application. Such hearing shall be set by the board within six months after receipt of an application from a group that is subject to the requirements of this section; except that the board may postpone such hearing for valid reasons and good cause.

(3) The board shall give notice of a hearing on a community field of membership application at least thirty days before the hearing date, by registered or certified mail, to the principal office of each credit union, savings and loan association, bank, or industrial bank within the neighborhood, community, or rural district sought to be served by the proposed community credit union, and to such other persons or credit unions, savings and loan associations, banks, or industrial banks as the board may designate. Such notice shall be in the form prescribed by the board and shall include the names of the incorporators, the name and location of the proposed community credit union, the date, time, and place of the hearing, and a statement that the application and proposed or amended articles of incorporation and proposed bylaws are available for inspection in the office of the board. The board shall also cause such notice to be published at least once, not less than twenty days prior to the hearing date, in a newspaper of general circulation within the neighborhood, community, or rural district in which the proposed credit union is to be located. Notwithstanding any other provisions in this section to the contrary, if the board has given the required notice of a hearing and as of the tenth day prior to the hearing has received no written protest against such application, the board may grant such community field of membership without a hearing if the applicants are known to the board.

(4) On hearing, the board may admit into evidence the application and any other relevant information in the files of the division. The applicant and all others who receive



notice by registered or certified mail pursuant to subsection (3) of this section shall be entitled to be heard and to introduce testimony at such hearing. The board may entertain such evidence or testimony from others as the board determines, in its sole discretion, to be necessary.

(5) Within ninety days following the conclusion of a hearing, the board shall issue a written order granting a community field of membership if the board finds:

(a) That the application, articles of incorporation, and bylaws conform to the provisions of this article and any rules promulgated by the board;

(b) That the credit union would benefit its members or proposed members, consistent with the purposes of this article, that the general character and fitness of the incorporators is appropriate, and that it is advisable from an economic standpoint to establish the proposed credit union;

(c) That the neighborhood, community, or rural district is politically, geographically, socially, or economically well-defined; and

(d) That the members of other credit unions within the neighborhood, community, or rural district are specifically excluded from membership, except as otherwise provided by the board for good cause.

(6) A credit union seeking to establish a community field of membership as part of a conversion from a federal to a state charter is subject to the notice and hearing requirements of this section.

**Source:** L. 93: Entire section added, p. 1443, § 2, effective June 6. L. 2004: (1), (2), (3), IP(5), and (6) amended, p. 129, § 1, effective July 1.

#### ANNOTATION

**Expert testimony provided substantial evidence to support the board's finding that the south metro Denver area constituted a well-**

**defined community for the purposes of subsection (5)(c).** *Colonial Bank v. Colo. Fin. Servs. Bd.*, 961 P.2d 579 (Colo. App. 1998).

**11-30-102. Bylaws of credit unions.** The commissioner shall cause to be prepared a standard form of bylaws, consistent with this article, to be issued to all credit unions. All credit unions shall operate under the standard bylaws; except that each such credit union, subject to the approval of the commissioner, shall propose its own name, its field of membership, the number of members of its board of directors, its credit committee, its supervisory committee, provisions relative to times and places of meetings of the membership and of the board of directors, provisions relative to the conduct of elections and balloting of the credit union, and modifications of the standard bylaws deemed appropriate by the board of directors for the operation of the individual credit union. Any and all amendments to the bylaws shall be approved by the commissioner before they become operative.

**Source:** L. 31: p. 297, § 2. CSA: C. 47, § 2. L. 41: p. 371, § 2. CRS 53: § 38-1-2. C.R.S. 1963: § 38-1-2. L. 67: p. 316, § 2. L. 84: Entire section amended, p. 372, § 1, effective July 1.

**11-30-103. Membership.** (1) Credit union membership shall consist of the incorporators and any other persons and organizations which are elected to membership and which pay any entrance fee. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members. A central credit union may be organized under this article and may have a membership made up principally of other credit unions organized pursuant to this article or any credit unions authorized to operate within the state of Colorado, and such membership may also include the officers and committee members of such credit unions, members or persons within the field of membership of credit unions within the state which have entered into or are about to enter into voluntary or involuntary liquidation proceedings, and small groups which the commissioner determines lack the potential membership to organize their own credit union if

such groups have a common bond of employment or association.

(2) Credit union organization and membership, other than those of a central credit union, shall be limited to groups having a common bond of employment or association or groups which reside within a well-defined neighborhood, community, or rural district having a population of no more than twenty-five thousand or as otherwise authorized by the board. Small groups which the commissioner determines to lack the potential membership to organize their own credit union may be eligible for membership in an existing credit union if such small groups have a common bond of employment or association. A member of the immediate family of any person who, under the provisions of this article, is eligible for membership in a credit union may also be admitted to membership therein. "Immediate family" means persons related by blood, by marriage, or by adoption.

(3) A member who leaves the field of membership of the credit union may retain membership in the credit union as provided by the bylaws of the credit union.

(4) Except as to accounts, which are defined in and which shall be paid as provided for in article 15 of title 15, C.R.S., nothing in this article shall be construed to prohibit credit unions organized under this article from carrying membership accounts in the names of two or more persons in joint tenancy; and, if any credit union transacting business in this state issues shares and deposits in the names of two or more persons payable to them or to any of them, such shares and deposits, or any part thereof or any interest or dividend thereon, may be paid to any one of said persons whether the others are living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient discharge to the credit union from all of said persons and their heirs, executors, administrators, and assigns, and such shares and deposits shall be deemed to be owned by said persons in joint tenancy with the right of survivorship.

**Source:** L. 31: p. 298, § 5. CSA: C. 47, § 5. L. 41: p. 372, § 5. L. 45: p. 307, § 1. CRS 53: § 38-1-5. C.R.S. 1963: § 38-1-5. L. 67: p. 317, § 4. L. 73: p. 1646, § 4. L. 75: (3) R&RE, p. 393, § 1, effective July 1; (4) amended, p. 586, § 2, effective July 1. L. 77: (1) and (2) amended, p. 565, § 1, effective July 1. L. 83: (1) amended, p. 483, § 2, effective July 1. L. 84: (2) amended, p. 372, § 2, effective July 1. L. 90: (2) amended, p. 1837, § 7, effective May 31; (4) amended, p. 920, § 3, effective July 1. L. 93: (2) amended, p. 1444, § 3, effective June 6. L. 2002: (4) amended, p. 1359, § 6, effective July 1.

#### ANNOTATION

The general assembly's use of the phrase "or" in subsection (2) in the phrase "limited to groups having a common bond of employment ... or groups which reside within a well-defined community" is ambiguous with respect to whether a credit union must choose between an employment-based group or a community or whether the credit union can include both in a field of membership. *Colonial Bank v. Colo. Fin. Servs. Bd.*, 961 P.2d 579 (Colo. App. 1998).

It is permissible to interpret this section in a manner that allows the approval of a credit

union that combines both community and employment-based fields of membership. *Colonial Bank v. Colo. Fin. Servs. Bd.*, 961 P.2d 579 (Colo. App. 1998).

Expert testimony provided substantial evidence to support the board's finding that the south metro Denver area constituted a well-defined community pursuant to subsection (2). *Colonial Bank v. Colo. Fin. Servs. Bd.*, 961 P.2d 579 (Colo. App. 1998).

**11-30-103.5. Branches.** Any credit union with a common bond consisting of groups residing within a well-defined neighborhood, community, or rural district having a population of greater than one hundred thousand shall be limited to one additional branch office until January 1, 1997.

**Source:** L. 93: Entire section added, p. 1445, § 4, effective June 6.



**11-30-104. Powers.** (1) A credit union has the following powers to:

(a) Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations or plans within the membership;

(b) Make loans to its members;

(c) Make loans to other credit unions as provided in this article;

(d) Deposit in state and national financial institutions insured by an agency of the federal government and to invest in the shares and deposits of the central credit union organized pursuant to this article;

(e) Invest in any of the following: Obligations of the United States or securities guaranteed or insured by any agency of the United States; obligations of any state or territory of the United States, or of any political subdivision or instrumentality thereof, except revenue obligations issued to provide, enlarge, or improve electric power, gas, water, or sewer facilities, or any combination thereof, issued by any city or town, or other similar municipal corporation having a population of less than five thousand persons, as determined by the latest federal decennial census; and, to an extent which shall not exceed ten percent of its shares, deposits, and undivided earnings, in shares of mutual funds or investment companies, stocks, bonds, or other securities of any corporation or religious or educational organizations, as may be approved as prudent and sound by the commissioner;

(f) Borrow money as provided in section 11-30-115;

(g) Apply for and hold membership in a central credit union organized pursuant to this article, in any other central credit union authorized to transact business in this state, and in any organization or association of credit unions;

(h) Acquire, through purchase or other lawful transactions, and to hold title to real and personal property necessary and incidental to the operation of the credit union, and to sell, mortgage, or otherwise dispose of the same;

(i) Exercise such incidental powers as shall be necessary to enable it to carry on effectively the business for which it is incorporated;

(j) Upon the written approval of the commissioner, engage in any activity in which such credit union could engage were it operating under a federal charter at the time, provided such activity is not prohibited by the laws of this state;

(k) Sell all or any portion of its assets and purchase all or any portion of the assets of another credit union and assume the liabilities of the selling credit union and its field of membership, subject to the approval of the commissioner;

(l) Allow shares and deposits to be paid for, transferred, and withdrawn for payment to the account holder or to third parties in such manner and with such procedures as may be established by the board of directors. This paragraph (l) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit.

(m) Make loans to, or permit the assumption of loans by, officers or employees of the division who are members of the credit union;

(n) Participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members when the borrower is a member of either the credit union originating the loan or the credit union purchasing a participation interest in the loan;

(o) Act as trustee or custodian of individual retirement accounts for the credit union's members authorized by federal or state law or as trustee or custodian of any plan established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962", as amended, or the federal "Employee Retirement Income Security Act of 1974", as amended, if a significant portion of the participants in any such plan are eligible for membership in the credit union and the funds held in the trustee or custodial capacity are invested in the credit union's shares or deposits;

(p) Act as fiscal agent for and receive payments on shares and deposits from nonmember units of the federal government or the state of Colorado or any agency or political subdivision thereof;

(q) Receive payment on deposits from nonmember financial institutions which are supervised under the laws of this state, the United States, or another state or territory of the United States.

(2) As authorized pursuant to section 10-2-601 (2), C.R.S., a credit union may, pursuant to federal law or under such rules as may be adopted by the financial services board or the commissioner of insurance pursuant to section 10-2-601, C.R.S., act as the agent, through the credit union or any credit union service organization, for any insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For such services, a credit union or credit union service organization may receive such fees or commissions as may be agreed between such entity and the insurance company.

**Source:** L. 31: p. 297, § 4. CSA: C. 47, § 4. L. 41: p. 372, § 4. CRS 53: § 38-1-4. C.R.S. 1963: § 38-1-4. L. 67: p. 316, § 3. L. 75: (1)(d) amended, p. 394, § 1, effective June 16; (1)(j) added, p. 374, § 3, effective June 26. L. 79: (1)(k) added, p. 415, § 1, effective July 1. L. 81: (1)(l) and (1)(m) added, p. 612, § 1, effective July 1. L. 83: (1)(k) amended and (1)(n) and (1)(o) added, p. 484, § 3, effective July 1. L. 84: (1)(d) and (1)(e) amended and (1)(p) and (1)(q) added, p. 373, § 3, effective July 1. L. 90: (1)(e), (1)(j), (1)(k), and (1)(m) amended, p. 1837, § 8, effective May 31. L. 96: (1)(q) amended, p. 185, § 2, effective April 8. L. 97: (2) added, p. 432, § 8, effective April 24. L. 2003: (1)(m) amended, p. 1207, § 7, effective July 1. L. 2004: (1)(m) and (1)(n) amended, p. 130, § 2, effective July 1.

**Cross references:** For the “Self-Employed Individuals Tax Retirement Act of 1962”, see Pub.L. 87-792, 76 Stat. 809; for the “Employee Retirement Income Security Act of 1974”, see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

**11-30-105. Exclusive right to use “credit union” in title.** A credit union organized in accordance with the provisions of this article, or in accordance with the laws of the United States or the laws of another state or territory of the United States, has the exclusive right to use the words “credit union” in its name or title; but an association composed of credit unions transacting business in this state may use the words “credit union” in its name or title. Any other person, association, corporation, or partnership using the words “credit union” in its name or title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

**Source:** L. 31: p. 297, § 3. CSA: C. 47, § 3. L. 41: p. 371, § 3. CRS 53: § 38-1-3. C.R.S. 1963: § 38-1-3. L. 92: Entire section amended, p. 934, § 1, effective April 2.

**11-30-106. Examinations - reports - powers of commissioner.** (1) (a) Credit unions shall be under the supervision of the commissioner. Every credit union shall be examined by the commissioner at least once during any eighteen-month period. The commissioner shall assess each credit union an amount to cover the expenses of the division attributable to the supervision of state-chartered credit unions subject to the commissioner’s jurisdiction. The amount assessed shall be determined according to a schedule or schedules or any other method established by the commissioner to be appropriate, but the assessment shall be at the same rate for all credit unions; except that the commissioner may establish a separate rate schedule for corporate and central credit unions. The commissioner may waive the payment of all or a portion of the assessment with respect to the year in which a charter is issued or cancelled or in which a final distribution is made in liquidation.

(b) The commissioner shall establish the division’s annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division for each fiscal year.

(c) Repealed.



(2) Annually, every credit union shall file a financial report with the commissioner on a date established by the commissioner, in a form prescribed by the commissioner. Said commissioner may require that additional reports be filed. For failure to file a report when due, unless excused for cause, a credit union shall pay to said commissioner a penalty, as prescribed by regulation, for each day of delinquency in filing.

(3) The board may issue rules and regulations necessary for the administration and enforcement of this article and shall reference the same to the sections of this article to which they apply. Such rules and regulations shall be promulgated pursuant to the provisions of article 4 of title 24, C.R.S., and a copy of such rules and regulations and of each order shall be mailed to each credit union in this state at least thirty days prior to the effective date thereof, except as to temporary or emergency rules.

(4) Except in cases where there is a statutory right to appeal to the board, any person aggrieved and directly affected by a final order of the commissioner may obtain judicial review thereof by filing an action for review with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S., within thirty days after the date of issuance of such order.

(5) The commissioner has the power to charge off the whole or any part of any asset of any credit union which could not be lawfully acquired by it and to reduce the value of any asset of a credit union to its market value or to a reasonable value, if no market value can be established. If the losses of a credit union exceed its undivided earnings and reserve funds so that the reasonable value of its assets is less than the total amount due the shareholders, the commissioner may order a reduction in the liability to each shareholder, dividing the loss proportionately among all shareholders. Any reduction from each share account shall be a specified percentage sufficient to correct the impaired condition and preserve the solvency of the credit union. If thereafter the credit union shall realize from such assets a greater amount than that fixed by the order of reduction, such excess shall be divided proportionately among the shareholders to whom liability was previously reduced but only to the extent of such reduction.

(6) The commissioner has the power to issue subpoenas and require attendance of any and all officers, directors, agents, and employees of any credit union and such other witnesses as he may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the commissioner, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the commissioner. Upon application of the commissioner, any person served with a subpoena issued by him may be required, by order of the district court of the county where the credit union has its principal office, to appear and answer such questions as may be put to him by the commissioner and be required to produce such books, papers, or documents in his possession as may be required by the commissioner.

(7) The commissioner may issue cease-and-desist orders if the commissioner determines from competent and substantial evidence that a credit union is engaged or has engaged, or when the commissioner has reasonable cause to believe the credit union is about to engage, in an unsafe or unsound practice or is violating or has violated, or when the commissioner has reasonable cause to believe the credit union is about to violate, a material provision of any law or regulation or any condition imposed in writing by the commissioner or any written agreement made with the commissioner. Any person aggrieved by a final order of the commissioner issued pursuant to this section may appeal such order to the financial services board pursuant to section 11-44-101.8.

(8) (a) (I) The commissioner may suspend or remove any director, officer, or employee of a credit union when the commissioner determines such person has:

(A) Violated the provisions of this article or a lawful regulation or order issued thereunder;

(B) Engaged or participated in any unsafe or unsound practice in the conduct of credit union business;

(C) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the credit union, and the credit union has suffered or will probably suffer financial loss or other damage, or the interests of members or account holders may be seriously prejudiced thereby; or

(D) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the credit union.

(II) The commissioner may suspend or remove any director, officer, or employee of a credit union who, under the laws of this state, the United States, or any other state or territory of the United States:

(A) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or

(B) Is subject to an order removing or suspending such individual from office, or prohibiting such individual's participation in the conduct of the affairs of any credit union, savings and loan association, bank, or other financial institution.

(b) (I) A suspension or removal order shall specify the grounds for the suspension or removal. A copy of the order shall be sent to the credit union concerned and to each member of its board of directors. The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by paragraph (a) of this subsection (8), at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(II) If the commissioner determines that extraordinary circumstances require immediate action, a person may be suspended or removed under paragraph (a) of this subsection (8) without notice or a hearing, but the commissioner shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.

(III) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(IV) Any person who performs any duty or exercises any power of a credit union after receipt of a suspension or removal order under paragraph (a) of this subsection (8) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** L. 31: p. 298, § 6. CSA: C. 47, § 6. L. 41: p. 373, § 6. L. 51: p. 314, § 1. CRS 53: § 38-1-6. L. 56: p. 132, § 1. L. 62: p. 142, § 1. C.R.S. 1963: § 38-1-6. L. 67: p. 317, § 5. L. 75: (1) amended, p. 380, § 4, effective July 1. L. 81: (1) amended, p. 615, § 1, effective July 1. L. 83: (2) amended, p. 484, § 4, effective July 1. L. 89: (1) and (2) amended and (6) to (8) added, p. 608, § 2, effective April 19. L. 92: (1) amended, p. 928, § 5, effective February 25. L. 93: (3) and (7) amended, p. 1445, § 5, effective June 6. L. 94: (1)(b), (2), (4), and (8) amended, p. 63, § 2, effective July 1. L. 95: (1)(a) amended, p. 85, § 1, effective March 23. L. 96: (1)(c) repealed, p. 185, § 3, effective April 8. L. 2000: (2) amended, p. 155, § 1, effective August 2. L. 2002: (8)(b)(IV) amended, p. 1470, § 35, effective October 1. L. 2004: IP(8)(a)(I) amended, p. 130, § 3, effective July 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (8)(b)(IV), see section 1 of chapter 318, Session Laws of Colorado 2002.

#### ANNOTATION

**Law reviews.** For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

**11-30-106.5. Assessment of civil money penalties.** (1) (a) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the commissioner may assess and collect a civil money penalty from any person who has violated any final cease-and-desist order issued by the commissioner pursuant to section 11-30-106 (7) or any suspension order issued pursuant to section 11-30-120.

(b) For the purposes of this section, a violation includes, but is not limited to, any



action, by any person alone or with another person, which causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(c) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty may be appealed to the financial services board pursuant to section 11-44-101.8. On appeal, the board may consider, among other matters, whether the civil money penalty assessed by the commissioner is appropriate considering the financial resources of the person assessed.

(3) In determining the amount of the civil money penalty to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, and such other matters as the commissioner may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed is determined by the commissioner to be in violation of a cease-and-desist order or an order of suspension or removal. Alternatively, the commissioner may assess a civil money penalty for such violation in a lump-sum amount not to exceed fifty thousand dollars.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the commissioner; except that the commissioner may, in the commissioner's discretion, compromise, modify, or set aside any civil money penalty. If any person fails to pay an assessment after it has become due and payable, the commissioner may refer the matter to the attorney general, who shall recover the amount assessed by action in the district court for the city and county of Denver. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

**Source:** L. 89: Entire section added, p. 610, § 3, effective April 19. L. 93: (2) amended, p. 1445, § 6, effective June 6. L. 94: (3) amended, p. 64, § 3, effective July 1. L. 99: Entire section amended, p. 1008, § 1, effective August 4.

**11-30-107. Fiscal year - meetings.** The fiscal year of all credit unions shall end December 31 of each year. The annual meeting shall be held within five months after the close of said fiscal year. Special meetings may be held in the manner indicated in the bylaws. At all meetings a member shall have but a single vote, whatever his share holdings. There shall be no voting by proxy, but a member other than a natural person may cast a single vote through a delegated agent.

**Source:** L. 31: p. 299, § 7. CSA: C. 47, § 7. L. 41: p. 374, § 7. CRS 53: § 38-1-7. C.R.S. 1963: § 38-1-7. L. 67: p. 318, § 6. L. 79: Entire section amended, p. 416, § 1, effective July 1.

**11-30-108. Elections.** At the annual meeting, or by other proper balloting within thirty days before and twenty days after the annual meeting, the credit union members shall elect from the membership a board of directors of not less than five members. A supervisory committee of not less than three members and a credit committee of not less than three members or a credit officer shall be elected by the credit union members or appointed by the board of directors as provided in the bylaws of the credit union. All such persons shall hold office for such terms respectively as the bylaws provide and until successors are elected or appointed and qualify. In addition, one or more alternate members of the credit committee may be elected by the credit union members or appointed by the board of directors to serve in the absence of members of the credit committee. No member shall hold

more than one elected office simultaneously. A record of the names and addresses of the members of the board and such committees, such alternates, and the officers shall be filed with the commissioner within twenty days after their election or appointment.

**Source:** L. 31: p. 300, § 8. CSA: C. 47, § 8. L. 41: p. 374, § 8. L. 47: p. 379, § 1. CRS 53: § 38-1-8. C.R.S. 1963: § 38-1-8. L. 67: p. 318, § 7. L. 77: Entire section amended, p. 567, § 1, effective July 1. L. 84: Entire section amended, p. 373, § 4, effective July 1. L. 2004: Entire section amended, p. 131, § 5, effective July 1.

**11-30-109. Directors and officers - compensation.** (1) At its first meeting after the annual election, the board of directors shall elect from its own number an executive officer, who may be designated as chair of the board or president; a vice-chair of the board or one or more vice-presidents; a treasurer; and a secretary. The offices of secretary and treasurer may be combined into one office known as secretary-treasurer. The persons so elected shall be the executive officers of the corporation. The board of directors shall be responsible for the general management of the affairs of the credit union, and more specifically to:

(a) Act on applications for membership, or to appoint from among the membership of the credit union, one or more membership officers who may act on applications for membership;

(b) Set policies, terms, and conditions under which loans will be available to members, determine interest rates on loans and on deposits, determine whether an interest refund shall be made to members, and declare the rates of any such interest refund and the classes of loans to which such refund shall apply. Any such refund shall be paid from interest income of the credit union and shall be paid only to members who paid interest to the credit union during the period and who were members of record of the credit union at the close of such period, but no refund shall be paid to a member whose loan is delinquent more than the period of time specified by the board of directors.

(c) Fix the amount of the blanket surety bond which shall cover all elected and appointed officials and all employees of the credit union. Such blanket surety bond shall be in an amount equal to the assets of the credit union as of December 31 of the previous year or one million dollars, whichever is less, or in such other amount as may be prescribed by the commissioner.

(d) Declare dividends and, subject to approval by the commissioner, adopt amendments to the bylaws of the credit union;

(e) Determine when any vacancy exists in the board of directors or in the credit committee, and to fill vacancies in the board and in the credit committee until successors are elected or appointed and qualify, and to appoint one or more assistant secretaries or treasurers or both, as needed; and the board may employ an officer in charge of operations whose title shall be either president or general manager, or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union;

(f) Determine the maximum individual share holdings in the credit union and the maximum amount of individual loans which can be made either with or without security;

(g) Have charge of and supervise investments of credit union funds;

(h) Maintain records pursuant to rules promulgated by the financial services board concerning how long records should be retained and in what manner;

(i) Provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee and of loan officers appointed by the credit committee, and to establish any salary which shall be paid to the treasurer or general manager.

(2) The duties of the officers shall be as determined in the bylaws; except that the treasurer shall be the general manager if none has been employed pursuant to paragraph (e) of subsection (1) of this section.

(3) The treasurer may be compensated for his service as treasurer. No other member of the board of directors or of any committee shall, as such, be compensated; except that reasonable health, accident, or similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position, shall not be considered compensation.



**Source:** L. 31: p. 300, § 9. CSA: C. 47, § 9. L. 41: p. 374, § 9. L. 51: p. 315, § 2. CRS 53: § 38-1-9. C.R.S. 1963: § 38-1-9. L. 67: p. 318, § 8. L. 77: IP(1) and (1)(e) amended, p. 567, § 2, effective July 1. L. 81: (1)(b) amended, p. 612, § 2, effective July 1. L. 83: (1)(b) amended, p. 484, § 5, effective July 1. L. 84: IP(1), (1)(b), (1)(c), (1)(g), and (2) amended and (3) added, p. 374, § 5, effective July 1. L. 90: (1)(c) amended, p. 1838, § 9, effective May 31. L. 94: IP(1) and (1)(b) amended, p. 65, § 4, effective July 1. L. 2004: (1)(h) amended, p. 130, § 4, effective July 1.

**11-30-110. Credit committee - credit officer.** The credit committee or credit officer shall have the general supervision of all loans to members. Applications for loans shall be on a form approved by the credit committee or the credit officer. At least a majority of the members of the credit committee or the credit officer shall pass and approve or disapprove all loans; except that the credit committee or the credit officer may appoint one or more loan officers and delegate to the same the power to approve or disapprove loans which are within limits prescribed by the credit committee or the credit officer. Each loan officer shall furnish to the credit committee or the credit officer a record of each loan application received by him within seven days after the date of filing of the application. All loans not approved by a loan officer may be considered by the credit committee or the credit officer. No member of the credit committee shall receive any compensation as a loan officer or be employed by the credit union in any other capacity. A credit officer may receive compensation in connection with the performance of his duties. The credit committee shall meet as often as may be necessary after due notice to each member. Vacancies in the credit committee shall be filled pursuant to section 11-30-109 (1) (e).

**Source:** L. 31: p. 301, § 10. CSA: C. 47, § 10. L. 41: p. 375, § 10. CRS 53: § 38-1-10. C.R.S. 1963: § 38-1-10. L. 67: p. 319, § 9. L. 75: Entire section amended, p. 394, § 2, effective June 16. L. 79: Entire section amended, p. 416, § 2, effective July 1.

**11-30-111. Supervisory committee.** (1) The supervisory committee shall:

(a) Make, or cause to be made, a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of the annual audit to the board of directors and a summary of that report to the members at the next annual meeting. The committee shall make or cause to be made such supplementary audits or examinations as it deems necessary.

(b) Make an annual report and submit the same at the annual meeting of the members;

(c) By unanimous vote of the committee if it deems such action to be necessary for the proper conduct of the credit union, suspend any officer or director of the credit union, or any member of the credit committee, and shall call a special meeting of the members of the credit union not less than seven nor more than fourteen days thereafter to act on such suspension. The members at said meeting may sustain any such suspension and remove any such officer, director, or member of the credit committee permanently and elect a successor thereto for the unexpired term of office or may reinstate any such person.

(d) Biennially verify, or cause to be verified, by a random sampling or by verification of all members' accounts, the members' share, deposit, and loan accounts. Such verification may be obtained by either calling in the passbooks, by sending or causing to be sent a statement of account to each member, or by such means as may be specified by the commissioner.

(2) By majority vote, the supervisory committee may call a special meeting of the members of the credit union to consider any violation of any provision of this article, the bylaws, or any rule or requirement of the credit union, by any officer, director, member of any committee, or any member, which the committee deems to be detrimental to the credit union. The supervisory committee shall fill vacancies in its own membership until the next annual election of the credit union.

**Source:** L. 31: p. 301, § 11. CSA: C. 47, § 11. L. 41: p. 375, § 11. L. 51: p. 315, § 3. CRS 53: § 38-1-11. C.R.S. 1963: § 38-1-11. L. 67: p. 319, § 10. L. 75: (1)(a)

amended, p. 396, § 1, effective June 16. **L. 84:** (1)(a) amended, p. 375, § 6, effective July 1. **L. 95:** (1)(d) amended, p. 85, § 2, effective March 23.

**11-30-112. Capital.** The capital of a credit union shall consist of the payments that have been made to it in shares by the several members thereof. The credit union has a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee and an annual membership fee, but such fees shall be uniform to all members.

**Source:** **L. 31:** p. 302, § 12. **CSA:** C. 47, § 12. **L. 41:** p. 376, § 12. **CRS 53:** § 38-1-12. **C.R.S. 1963:** § 38-1-12. **L. 79:** Entire section amended, p. 417, § 3, effective July 1. **L. 83:** Entire section amended, p. 485, § 6, effective July 1.

#### ANNOTATION

**Law reviews.** For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

**11-30-113. Minors.** Shares may be issued and deposits received in the name of a minor. A member who is a minor shall be entitled to withdraw or pledge any shares owned by him and to receive from the credit union any and all dividends, or other moneys, at any time the same become due, in the same manner and subject to the same conditions as an adult, and any receipt or acquittance signed by such a minor shall constitute a valid release and discharge to the credit union for the payment of such moneys. The board of directors of the credit union may provide in the bylaws of the credit union a minimum age of any minor to be eligible for membership in the credit union and to vote at any meeting of the members.

**Source:** **L. 31:** p. 302, § 13. **CSA:** C. 47, § 13. **L. 41:** p. 376, § 13. **CRS 53:** § 38-1-13. **C.R.S. 1963:** § 38-1-13. **L. 67:** p. 320, § 11.

#### **11-30-114. Rates. (Repealed)**

**Source:** **L. 31:** p. 302, § 14. **CSA:** C. 47, § 14. **L. 41:** p. 376, § 14. **L. 51:** p. 315, § 4. **CRS 53:** § 38-1-14. **C.R.S. 1963:** § 38-1-14. **L. 80:** Entire section amended, p. 469, § 1, effective March 10. **L. 85:** Entire section repealed, p. 398, § 1, effective March 1.

**11-30-115. Power to borrow and loan money.** A credit union may borrow from any source a total sum which shall not exceed fifty percent of its shares, deposits, and undivided earnings. No credit union shall loan more than ten percent of its assets to any member or to another credit union.

**Source:** **L. 31:** p. 303, § 15. **CSA:** C. 47, § 15. **L. 41:** p. 376, § 15. **L. 53:** p. 239, § 1. **CRS 53:** § 38-1-15. **C.R.S. 1963:** § 38-1-15. **L. 67:** p. 320, § 12. **L. 84:** Entire section amended, p. 375, § 7, effective July 1.

**11-30-116. Loans.** A credit union may make loans to members subject to the provisions of this article and the bylaws of the credit union. A borrower may repay a loan in whole or in part any day the office of the credit union is open for business. A credit union may make loans to its own directors, credit officers, or members of its own supervisory committee or credit committee, but no such loan or aggregate of loans to any one director, credit officer, or committee member that exceeds twenty thousand dollars plus pledged shares may be made unless approved by the board of directors.

**Source:** **L. 31:** p. 303, § 16. **CSA:** C. 47, § 16. **L. 41:** p. 376, § 16. **L. 51:** p. 315, § 5. **L. 53:** p. 239, § 2. **CRS 53:** § 38-1-16. **C.R.S. 1963:** § 38-1-16. **L. 67:** p. 320, § 13.



**L. 83:** Entire section amended, p. 485, § 7, effective July 1. **L. 84:** Entire section amended, p. 375, § 8, effective July 1. **L. 87:** Entire section amended, p. 464, § 1, effective May 8. **L. 2004:** Entire section amended, p. 131, § 6, effective July 1.

### **11-30-117. Reserves.**

(1) (Deleted by amendment, L. 2004, p. 131, § 7, effective July 1, 2004.)

(2) The board may require reserves to protect the interest of members by general rules, including reserve requirements for any privately insured credit union. In addition, the commissioner may require special reserves by an order directed to an individual credit union in any special case.

**Source:** **L. 31:** p. 303, § 17. **CSA:** C. 47, § 17. **L. 41:** p. 377, § 17. **L. 45:** p. 308, § 2. **CRS 53:** § 38-1-17. **C.R.S. 1963:** § 38-1-17. **L. 67:** p. 321, § 14. **L. 79:** Entire section R&RE, p. 417, § 4, effective July 1. **L. 90:** (2) amended, p. 1838, § 10, effective May 31. **L. 2004:** Entire section amended, p. 131, § 7, effective July 1.

**11-30-117.5. Share insurance required - confidentiality.** (1) Each credit union shall apply for insurance on its shares and deposits as provided by the national credit union administration board under section 201 of the "Federal Credit Union Act", 12 U.S.C. sec. 1781, or comparable insurance approved by the commissioner. Credit unions with debt and equity capital consisting primarily of funds from other credit unions shall not be subject to the requirements of this section.

(2) Any credit union which is denied a commitment for such insurance shall, within thirty days of such denial, commence steps to liquidate or merge with an insured credit union or shall apply in writing to the commissioner for an extension of time to obtain an insurance commitment. The commissioner shall grant one or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to satisfy the conditions precedent to the issuance of an insurance commitment.

(3) No credit union shall be granted a charter by the commissioner unless such credit union has applied for insurance on its shares and deposits as provided in this section.

(4) Neither the commissioner, the commissioner's deputy, or any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (4) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division or in criminal actions;

(b) Any party entitled to appear in a hearing on an application for a community credit union charter shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws;

(c) The commissioner may furnish information as to the condition of a credit union to the national credit union administration board or its successors, a qualified insuring organization, a liquidating agent appointed by the commissioner, a federal home loan bank, a federal reserve bank, the division of banking, the executive director of the department of regulatory agencies, or a department or division of any other state having supervisory authority over credit unions and may accept any report of examination made on behalf of such board, organization, liquidating agent, bank, department, or division;

(d) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies relating to possible misconduct by a person or entity licensed by said agency;

(e) The board, the commissioner, and their respective designees may exchange information obtained by the division as to possible criminal violations of any law relating to the activities of a credit union with the appropriate law enforcement agencies; and

(f) Notwithstanding any provision of this article to the contrary, the commissioner may disclose any information in the records of the division or acquired by the commissioner in the discharge of the commissioner's duties that is available from the national credit union

administration board or its successors, or the disclosure of which has been specifically authorized by the board of directors of the credit union to which such information relates. Nothing in this section shall be construed to authorize the board of directors of a credit union to waive any privileges that belong solely to the financial services board, the division, or its employees.

**Source:** L. 81: Entire section added, p. 616, § 2, effective July 1. L. 89: (4) amended, p. 611, § 4, effective April 19. L. 93: (4) amended, p. 1446, § 7, effective June 6. L. 94: (1) and (3) amended, p. 65, § 5, effective July 1. L. 99: (4) amended, p. 1009, § 2, effective August 4. L. 2004: (4) amended, p. 132, § 8, effective July 1. L. 2007: (4) amended, p. 2020, § 13, effective June 1. L. 2008: (4) amended, p. 179, § 1, effective August 5.

**11-30-118. Dividends.** At such intervals and for such periods of time as the board of directors may authorize and after provision for the required reserves, the board of directors may declare a dividend. Dividends may be paid at various rates on different classes of shares, and dividend credit may be accrued on different classes of shares, as determined by the board of directors. Dividends shall not be paid in excess of available earnings.

**Source:** L. 31: p. 303, § 18. CSA: C. 47, § 18. L. 41: p. 377, § 18. L. 45: p. 309, § 3. L. 51: p. 315, § 6. CRS 53: § 38-1-18. C.R.S. 1963: § 38-1-18. L. 67: p. 321, § 15. L. 75: Entire section amended, p. 395, § 3, effective June 16. L. 81: Entire section amended, p. 613, § 3, effective July 1. L. 83: Entire section amended, p. 485, § 8, effective July 1. L. 84: Entire section amended, p. 375, § 9, effective July 1.

**11-30-118.5. Preauthorized transfers - credit union must have written authorization. (Repealed)**

**Source:** L. 88: Entire section added, p. 345, § 9, effective July 1. L. 89: Entire section repealed, p. 592, § 1, effective April 7.

**11-30-119. Expulsion or withdrawal of members - deceased members.** (1) Any member may withdraw from the credit union at any time, but notice of withdrawal may be required in the bylaws. The board of directors may expel any member from membership in the credit union if such member fails to comply with the written rules and policies of the credit union as adopted and made available to the membership.

(2) A member shall not be expelled until the member has been informed in writing of the reasons for the expulsion and has had reasonable opportunity to be heard.

(3) All amounts paid on shares or as deposits of an expelled member or withdrawing member, together with any dividends or interest accredited thereto, to the date thereof, as funds become available and after deducting all amounts due from the member to the credit union, shall be paid to such member. The credit union may require sixty days' written notice of intention to withdraw shares and thirty days' written notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but shall not, by such expulsion or withdrawal, be released from any remaining liability to the credit union.

(4) (Deleted by amendment, L. 2004, p. 133, § 9, effective July 1, 2004.)

**Source:** L. 31: p. 304, § 19. CSA: C. 47, § 19. L. 41: p. 377, § 19. CRS 53: § 38-1-19. C.R.S. 1963: § 38-1-19. L. 67: p. 322, § 16. L. 81: Entire section amended, p. 613, § 4, effective July 1. L. 2001: Entire section amended, p. 200, § 1, effective September 1. L. 2004: (3) and (4) amended, p. 133, § 9, effective July 1.

**11-30-120. Suspension - liquidation - procedures.** (1) (a) If it appears that any credit union is insolvent, or that it has willfully violated any provision of this article, or that it is operating in an unsafe or unsound manner, the commissioner may issue his order for



such credit union to show cause why its operations should not be suspended until such insolvency, violation, or manner of operation is rectified and afford the credit union an opportunity for a hearing not less than ten days nor more than twenty days after such order. Such order shall be in writing and delivered by registered or certified mail. If the credit union fails to answer such order or if any officer or director or attorney for the credit union fails to appear at the time set for the hearing, the commissioner either may revoke the certificate of incorporation of the credit union or may order the immediate suspension of operations of the credit union, except the collection of payments on outstanding loans or other obligations due the credit union, or both, and may enforce any such order by an action, filed in the district court of the judicial district wherein the principal office of the credit union is located, seeking to enjoin further operations or to appoint a receiver for such credit union.

(b) Any credit union to which an order to show cause has been issued pursuant to paragraph (a) of this subsection (1) may include with any answer or may present at any hearing resulting from such order its proposed plan to continue operations and rectify the insolvency, violation, or manner of operation specified in said order; or the credit union may request that it be dissolved and liquidated and a liquidating agent be appointed by the commissioner. Any credit union may request a stay of execution of any order of the commissioner revoking its certificate of incorporation or suspending its operations by filing an action in the district court for the judicial district in which the principal office of the credit union is located, within ten days after the issuance of such order.

(c) If the commissioner revokes the charter of the credit union, he shall appoint a liquidating agent to liquidate the assets of the credit union pursuant to subsection (3) of this section.

(d) If in the opinion of the board an emergency exists which may result in serious losses to the members, the board may revoke the charter of a credit union and immediately appoint a liquidating agent without notice or a hearing. Notice of the board's emergency determination shall be posted on the premises of the credit union that is the subject of the determination. Within ten days after an emergency determination by the board, the credit union or the directors of the credit union may file an application with the board to rescind such determination. The filing of an application to rescind a determination shall not act as a stay of the board's action pursuant to this subsection (1). The board shall grant the application if it finds that its action was unauthorized and upon granting an application shall rescind its action and restore the credit union to its board of directors. If no application is filed within ten days after the board's emergency determination, all action taken by the board shall be final.

(1.5) (a) The commissioner may appoint himself or herself or a third party as conservator of any credit union and immediately take possession and control of the business and assets of the credit union if the commissioner determines that:

(I) Such action is necessary to conserve the assets of the credit union or to protect the interests of its members from acts or omissions of the existing management;

(II) The credit union, by a resolution of its board of directors, consents to such action;

(III) There is a willful violation of a cease-and-desist order that results in the credit union being operated in an unsafe or unsound manner; or

(IV) The credit union is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.

(b) The commissioner may appoint a conservator and take immediate possession of the credit union without prior notice or a hearing; except that, within ten days after the conservator is appointed, the credit union may file an appeal with the board requesting the board to rescind the commissioner's appointment of a conservator. Upon receipt of a timely appeal, the board shall set a date for a hearing and determine whether the commissioner's appointment should be rescinded; except that such appeal shall not act as a stay of the commissioner's action. If the board finds the commissioner's action was unauthorized, the board shall restore control of the credit union to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, any action taken by the commissioner shall be final.

(c) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to this subsection (1.5) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the credit union.

(d) The conservator shall have all the powers of the members, directors, officers, and committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the credit union and make regular reports to the commissioner until such time as the commissioner has determined that the purposes of conservatorship have been accomplished and the credit union should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the credit union. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the credit union in the manner described in subsection (1) of this section.

(e) If a conservator is appointed, and is other than the national credit union administration, another approved insurer, or an employee of the division of financial services, the conservator and any assistants shall provide a bond, payable to the credit union and executed by a surety company authorized to do business in this state, which meets with the approval of the financial services board, for the faithful discharge of their duties in connection with such conservatorship and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the credit union. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof. This requirement may be deemed met if the financial services board determines that the credit union's fidelity bond covers the conservator and any assistants.

(2) Any credit union may be voluntarily dissolved and liquidated upon majority vote of the entire membership thereof at a meeting especially called for the purpose or at the annual meeting where notice of such proposed action is mailed to the members at least thirty days prior to such meeting. In either event, a copy of the notice shall be delivered to the commissioner not less than ten days prior to such meeting. Any member of a credit union may cast his ballot for or against such dissolution and liquidation by mail within twenty days after such meeting. If a majority of the members of the credit union vote in favor of dissolution and liquidation, the board of directors, within five days after the close of voting, shall notify the commissioner of such action and specify the names and addresses of the directors and officers of the credit union who will conduct the dissolution and liquidation of the credit union. Upon such favorable vote, the credit union shall cease to do business except for the collection of payments on outstanding loans or other obligations due the credit union.

(3) Under any procedure to dissolve and liquidate a credit union pursuant to subsection (1) or (2) of this section, the credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and it may sue and be sued for the enforcement of its debts and operations until its affairs are fully adjusted in liquidation. The assets of the credit union shall be used to pay: First, the expenses incidental to liquidation; second, liabilities due nonmembers; and third, deposits and savings club accounts. Any remaining assets shall be distributed to the members proportionately to the shares held by each member as of the date of dissolution.

(4) Upon the liquidation and distribution of all assets of the credit union which may be reasonably expected to be collectible, the board of directors or the liquidating agent, as the case may be, shall execute in duplicate a certificate of dissolution, prescribed by the commissioner, upon which date the credit union shall cease to exist, and file the same with the secretary of state.

**Source:** L. 31: p. 304, § 20. CSA: C. 47, § 20. L. 41: p. 377, § 20. L. 51: p. 316, §§ 7, 8. CRS 53: § 38-1-20. C.R.S. 1963: § 38-1-20. L. 67: p. 322, § 17. L. 94: (1)(d) added, p. 65, § 6, effective July 1. L. 96: (4) amended, p. 185, § 4, effective April 8. L. 99: (1.5) added, p. 1010, § 3, effective August 4.



**11-30-120.5. Conversion - state to federal credit union - federal to state credit union.** (1) A credit union organized under the provisions of this article may be converted into a federal credit union by complying with the requirements of this section.

(2) (a) The proposition for such conversion shall first be approved by a majority of the directors of the credit union. If so approved, the proposition shall be submitted to a meeting of its members. The notice of such meeting shall be in writing and may be delivered in person to each member or mailed to each member at the address for such member appearing on the records of the credit union. Such delivery or mailing shall be not more than thirty days nor less than seven days prior to the time of the meeting. Approval of the proposition for conversion shall be by the affirmative vote of not less than two-thirds of the members present and voting at the meeting.

(b) A copy of the minutes of such meeting, verified by the affidavits of the president or vice-president and the secretary of the meeting, shall be filed with the administrator within ten days after the meeting.

(3) Within ninety days after such meeting, the credit union shall take such action as may be necessary under the federal credit union act to convert into a federal credit union, and, within ten days after receipt of the federal credit union charter, there shall be filed with the commissioner a copy of the charter thus issued. Upon such filing the credit union shall cease to be a state credit union.

(4) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of the state law under which said credit union was organized; except that the successor federal credit union, being vested with all of the assets, shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(5) A credit union organized under the laws of the United States may be converted into a credit union organized under the laws of this state by complying with all requirements to cease being a federal credit union and doing all acts and obtaining all authorization necessary to organize as a credit union under the provisions of this article.

**Source:** L. 75: Entire section added, p. 396, § 2, effective June 16. L. 84: (5) added, p. 375, § 10, effective July 1. L. 90: (3) amended, p. 1838, § 11, effective May 31.

**11-30-121. Change in place of business.** A credit union may change its place of business to a location outside of the county or city and county in which previously located upon receiving written permission therefor from the commissioner. A credit union may change its place of business within the county or city and county in which previously located by providing written notice of the new address and the effective date of such change to the commissioner.

**Source:** L. 31: p. 305, § 21. CSA: C. 47, § 21. L. 41: p. 378, § 21. L. 51: p. 316, § 9. CRS 53: § 38-1-21. C.R.S. 1963: § 38-1-21. L. 67: p. 323, § 18.

**11-30-122. Merger.** (1) The method of merger of two or more credit unions shall be as follows:

(a) (I) The board of directors of the continuing and each merging credit union shall:  
(A) Approve a plan for the proposed merger; and  
(B) Authorize representatives of each credit union to act on each credit union's behalf to bring about the merger.

(II) The plan shall include such information as the board deems appropriate.

(b) Upon approval of the merger plan by each board of directors for each credit union involved in the transaction, the merger plan, together with the resolutions of each board of directors, shall be submitted to the board. If the board determines that the merger plan complies with the provisions of this article and any applicable rules thereto, the board may approve the merger plan, subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger.

(c) A meeting of the members of each merging credit union involved shall be called for the purpose of considering a merger. Notice of the meeting, including purpose, date, time, place, and ballot of the merger plan shall be given to the entire membership. At such meeting, at least two-thirds of the members present and voting must approve the proposed merger. If any member approves or disapproves the merger by returning a ballot, signed by such member, to the secretary of the credit union at or before the meeting, such ballot for all purposes of this section shall be deemed equivalent to the vote of such member at such meeting, notwithstanding the member is not then present.

(2) The merger shall thereupon be consummated in the following manner:

(a) The duly authorized representatives of each credit union shall execute, in duplicate, a certificate of merger stating:

(I) That the board of directors of each credit union has approved the merger;

(II) That more than two-thirds of the members of each merging credit union have approved the terms and conditions of the proposed merger at a meeting of the members called for that purpose; and

(III) The name and location of the continuing credit union.

(b) The continuing credit union shall prepare and adopt any bylaw amendments required by the board, consistent with the provisions of this article, and execute the same in duplicate.

(c) The certificate above provided for and any required bylaw amendments, both executed in duplicate, shall be forwarded to the board.

(3) (Deleted by amendment, L. 2004, p. 133, § 10, effective July 1, 2004.)

(4) If the board approves the certificate and bylaw amendments, it shall so notify the representatives and shall issue a certificate of approval, attach it to the duplicate certificate of merger, and return the same to the representatives of the participating credit unions together with the duplicate of the bylaw amendments.

(5) The duplicate of the certificate of merger with the board's certificate of approval attached shall be filed with the secretary of state who shall make a record of said certificate and return it, with his certificate of record attached, to the board for permanent record. The fee for said filing shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(6) Thereupon the participating credit unions shall be merged in accordance with the provisions of this section. The continuing credit union shall take over the assets and assume all the liabilities of each merging credit union.

(7) A state chartered credit union may merge with a federal credit union provided all requirements outlined in this article and the appropriate federal credit union regulations have been complied with and approval of such proposed merger has been authorized by the board of directors of each credit union involved.

**Source:** L. 31: p. 305, § 21. CSA: C. 47, § 21. L. 41: p. 378, § 21. L. 51: p. 316, § 9. CRS 53: § 38-1-22. C.R.S. 1963: § 38-1-22. L. 75: (1) amended and (7) added, p. 397, § 3, effective June 16. L. 83: (5) amended, p. 876, § 40, effective July 1. L. 84: (2)(a) amended, p. 376, § 11, effective July 1. L. 90: (2)(c) and (3) to (5) amended, p. 1838, § 12, effective May 31. L. 93: (2)(c) and (3) to (5) amended, p. 1446, § 8, effective June 6. L. 2004: (1) to (4) and (6) amended, p. 133, § 10, effective July 1. L. 2005: (2)(a) amended, p. 763, § 16, effective June 1.

**11-30-123. Taxation.** A credit union shall be deemed an institution for savings and, together with all accumulations therein, shall not be subject to taxation except as to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one member to another.

**Source:** L. 31: p. 305, § 22. CSA: C. 47, § 22. L. 41: p. 378, § 22. CRS 53: § 38-1-23. C.R.S. 1963: § 38-1-23.



## ANNOTATION

**No exemption as to payment of sales taxes** Southwest Catholic Credit Union v. Charnes, 665 P.2d 626 (Colo. App. 1982).  
is provided to state chartered credit unions.

**11-30-124. Transfer of functions - conforming of statutes.** (1) As of April 11, 1988, the powers, duties, and functions of the state bank commissioner under this article are transferred to the state commissioner of financial services.

(2) On April 11, 1988, all employees of the division of banking whose principal duties are concerned with the powers, duties, and functions transferred to the state commissioner of financial services and whose employment in the division of financial services is deemed necessary by the executive director of the department of regulatory agencies to carry out the purposes of this article are transferred to the division of financial services and shall become employees thereof. Such employees shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous.

(3) On April 11, 1988, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the division of banking pertaining to the powers, duties, and functions transferred to the state commissioner of financial services pursuant to this section shall be transferred to the division of financial services and shall become the property thereof.

(4) Whenever the state bank commissioner or the division of banking is referred to or designated by any contract or other document in connection with the powers, duties, and functions transferred to the state commissioner of financial services, such reference or designation shall be deemed to apply to the state commissioner of financial services or the division of financial services, as the case may be. All contracts entered into by the state bank commissioner or the division of banking prior to April 11, 1988, in connection with the powers, duties, and functions transferred to the state commissioner of financial services are hereby validated, with the state commissioner of financial services succeeding to all the rights and obligations of such contracts.

(5) On April 11, 1988, any unexpended appropriations of funds for the current fiscal year made to the division of banking and allocated for the administration and enforcement of this article shall be transferred to the division of financial services. The executive director of the department of regulatory agencies shall have the final authority to determine the allocation of funds for purposes of the transfer under this subsection (5).

(6) The revisor of statutes is authorized to change all references to the state bank commissioner in this article to refer to the state commissioner of financial services and to change all references to the division of banking in this article to refer to the division of financial services.

**Source: L. 88:** Entire section added, p. 416, § 6, effective April 11. **L. 89:** Entire section amended, p. 618, § 9, effective July 1.

**11-30-125. Notice of branch opening and closing.** (1) Any credit union that has its principal place of business in this state, upon thirty days' prior written notice to the state commissioner of financial services, may establish one or more de novo branches anywhere in this state.

(2) No later than ninety days prior to the proposed date of any branch closing, a notice of branch closing shall be filed with the commissioner. The notice of branch closing shall include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

**Source: L. 2004:** Entire section added, p. 135, § 11, effective July 1.

**MISCELLANEOUS****ARTICLE 35****Surety Bonds Alternatives**

11-35-101.	Alternatives to surety bonds permitted - requirements.	11-35-101.5.	Irrevocable letter of credit permitted - requirements.
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**11-35-101. Alternatives to surety bonds permitted - requirements.** (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.

(2) Each appropriate state agency required to accept such bonds, savings accounts, deposits, or certificates of deposit shall promulgate rules and regulations defining the method of assignment, required period of liability, and such other procedures as may be necessary.

(3) All rules adopted or amended by state agencies pursuant to subsection (2) of this section on or after July 1, 1979, shall be subject to section 24-4-103 (8) (c) and (8) (d), C.R.S., and section 24-4-108 or 24-34-104 (9) (b) (II), C.R.S.

**Source:** **L. 79:** Entire article added, p. 419, § 1, effective July 1. **L. 80:** (1) and (3) amended, pp. 786, 791, §§ 15, 36, effective June 5. **L. 81:** (1) amended, p. 617, § 2, effective April 30; (3) amended, p. 1177, § 2, effective July 1. **L. 82:** (1) amended, p. 621, § 8, effective April 2. **L. 83:** (1) amended, p. 1292, § 1, effective April 21; (1) amended, p. 701, § 4, effective June 10. **L. 84:** (1) amended, p. 409, § 2, effective March 5; (1) amended, p. 1007, § 2, effective March 26; (1) amended, p. 920, § 6, effective January 1, 1985. **L. 85:** (1) amended, p. 437, § 2, effective July 1. **L. 87:** (1) amended, p. 473, § 5, effective July 1. **L. 89:** (1) amended, p. 1394, § 2, effective April 12. **L. 90:** (1) amended, p. 1681, § 5, effective October 1. **L. 92:** (1) amended, p. 2168, § 8, effective June 2; (1) amended, p. 1863, § 28, effective July 1. **L. 93:** (1) amended, p. 1773, § 27, effective June 6; (1) amended, p. 260, § 5, effective July 1; (1) amended, p. 1236, § 4, effective July 1; (1) amended, p. 1391, § 10, effective January 1, 1995. **L. 94:** (1) amended, p. 1630, § 32, effective May 31; (1) amended, p. 2545, § 20, effective January 1, 1995. **L. 95:** (1) amended, p. 1091, § 2, effective May 31; (1) amended, p. 1332, § 3, effective July 1. **L. 2000:** (1) amended, p. 1937, § 16, effective October 1; (1) amended, p. 3, § 3, effective July 1, 2001. **L. 2001:** (1) amended, p. 1214, § 43, effective January 1, 2002. **L. 2003:** (1) amended, p. 1340, § 2, effective April 22. **L. 2006:** (1) amended, p. 1587, § 2, effective July 1. **L. 2007:** (1) amended, p. 1850, § 3, effective July 1. **L. 2009:** (1) amended, (SB 09-117), ch. 123, p. 527, § 21, effective April 16; (1) amended, (SB 09-151), ch. 89, p. 346, § 3, effective July 1.

**Editor's note:** (1) Amendments to subsection (1) by House Bill 83-1133 and Senate Bill 83-165 were harmonized.



(2) Amendments to subsection (1) by Senate Bill 84-87 were harmonized with House Bill 84-1063 and Senate Bill 84-78 effective January 1, 1985.

(3) Amendments to subsection (1) by House Bill 92-1359 and Senate Bill 92-88 were harmonized.

(4) Amendments to subsection (1) by House Bill 93-1254 were harmonized with House Bill 93-1268, House Bill 93-1270, and House Bill 93-1342.

(5) Amendments to subsection (1) by Senate Bill 94-1 and Senate Bill 94-206 were harmonized.

(6) Amendments to subsection (1) by House Bill 95-1011 and House Bill 95-1212 were harmonized.

(7) Amendments to subsection (1) by House Bill 00-1155 and House Bill 00-1479 are harmonized effective July 1, 2001.

(8) Amendments to subsection (1) by Senate Bill 09-151 and Senate Bill 09-117 were harmonized.

## ANNOTATION

The general assembly did not intend that the amount of funds available for reimbursement should vary depending on whether the

security was in the form of a bond or cash alternative. *Western Surety Co. v. Smith*, 914 P.2d 451 (Colo. App. 1995).

**11-35-101.5. Irrevocable letter of credit permitted - requirements.** (1) Where there is the requirement of either an irrevocable letter of credit or a bond as a condition to licensure in sections 12-16-106 (1) and 12-16-218 (1), C.R.S., or where an irrevocable letter of credit is permitted as an alternative to a surety bond, evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, as a condition to licensure or authority to conduct business or perform duties in this state, provided in sections 12-16-105 (5), 12-16-106 (1) (a), 12-16-218 (1) (a), 33-4-101 (1), 33-12-104 (1), 37-91-107 (2), and 39-27-104 (2.1) (c), C.R.S., the requirement shall be satisfied by an irrevocable letter of credit issued by a state or national bank or a state or federal savings and loan association doing business in this state. The requirement shall also be satisfied by an irrevocable letter of credit issued by the bank or banks for cooperatives that are organized pursuant to federal statutes and that serve the region in which the state of Colorado is located. Such letter of credit shall be in an amount specified by statute, if any, and shall name the appropriate state agency as beneficiary, in favor of the people of the state of Colorado.

(2) Each appropriate state agency required to accept such irrevocable letters of credit shall define the method of transferability, the required period of liability, and such other procedures as may be necessary.

(3) Before accepting such irrevocable letters of credit, each appropriate state agency shall determine that the financial institution upon which such irrevocable letter of credit is drawn will be able to make payment upon such letter should it become necessary.

**Source:** **L. 87:** Entire section added, p. 473, § 6, effective May 8. **L. 88:** (1) amended, p. 446, § 1, effective March 31. **L. 89:** (1) amended, p. 1394, § 3, effective April 12. **L. 92:** (1) amended, p. 2168, § 9, effective June 2. **L. 93:** (1) amended, p. 1391, § 11, effective January 1, 1995. **L. 94:** (1) amended, p. 1630, § 33, effective May 31; (1) amended, p. 2545, § 34, effective January 1, 1995. **L. 2000:** (1) amended, p. 1937, § 17, effective October 1. **L. 2002:** (1) amended, p. 1013, § 9, effective June 1. **L. 2009:** (1) amended, (SB 09-151), ch. 89, p. 347, § 4, effective July 1.

## ARTICLE 36

### Small Business Development Credit Corporations

#### 11-36-101 to 11-36-118. (Repealed)

**Editor's note:** (1) This article was added in 1988. For amendments to this article prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the

replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 11-36-117 provided for the repeal of this article, effective July 1, 1994. (See L. 94, p. 66.)

ARTICLE 37

Colorado Investment Deposits

11-37-101 to 11-37-105. (Repealed)

Source: L. 2004: Entire article repealed, p. 323, § 7, effective April 7.

Editor’s note: This article was added in 1990 and was not amended prior to its repeal in 2004. For the text of this article prior to 2004, consult the 2003 Colorado Revised Statutes.

ARTICLE 37.5

Foreign Capital Depositories

11-37.5-101 to 11-37.5-503. (Repealed)

Source: L. 2009: Entire article repealed, (HB 09-1053), ch. 159, p. 687, § 1, effective August 5.

Editor’s note: This article was added in 1999. For amendments to this article prior to its repeal in 2009, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 38

Reverse Mortgages

11-38-101.	Legislative declaration.		utes.
11-38-102.	Definitions.	11-38-109.	Disclosure - total loan cost.
11-38-103.	Prepayment.	11-38-110.	Treatment of reverse mort-
11-38-104.	Intervening liens.		gage loan proceeds by pub-
11-38-105.	Interest - periodic advances.		lic benefit programs.
11-38-106.	Lender default.	11-38-111.	Consumer information and
11-38-107.	Repayment.		counseling.
11-38-108.	Inapplicability of related stat-	11-38-112.	Application of article.

11-38-101. Legislative declaration. (1) The general assembly hereby finds that Colorado’s elderly homeowners should have the opportunity and be permitted to meet their financial needs by accessing the equity in their homes through a reverse mortgage loan transaction.

(2) The general assembly further finds that many restrictions and requirements that exist to govern traditional mortgage loan transactions in Colorado are inapplicable in the context of reverse mortgages and that state law should be clarified to ensure that inapplicability.

(3) The general assembly therefore declares that, in order to foster reverse mortgage transactions and better serve the elderly citizens of this state, it is necessary to enact this article authorizing the making of reverse mortgages and expressly relieving reverse mortgage lenders and borrowers from compliance with inappropriate statutory requirements.

Source: L. 92: Entire article added, p. 939, § 1, effective April 23.



**11-38-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Borrower" means the person receiving cash advances pursuant to the terms of and obligated for repayment of a reverse mortgage. "Person" includes plural as well as singular.

(2) "Independent counseling" means counseling by a person unaffiliated with the lender, including but not limited to a housing counseling agency approved by the United States department of housing and urban development.

(3) "Lender" means a bank, savings and loan association, or credit union organized under the laws of the United States or the state of Colorado or a person who regularly makes loans or advances secured by interests in residential real property.

(4) "Reverse mortgage" means a written instrument evidencing or creating a nonrecourse loan secured by real property which:

(a) Provides cash advances, whether in the form of a lump sum, periodic payments, a line of credit, or other similar methods, or a combination thereof, to a borrower based on the equity in the borrower's owner-occupied principal residence, which periodic payments may be derived from an annuity purchased with such cash advances;

(b) Requires no partial or other payment of principal or interest until the entire loan becomes due and payable; and

(c) Is made by any lender as defined in subsection (3) of this section.

**Source: L. 92:** Entire article added, p. 939, § 1, effective April 23.

**11-38-103. Prepayment.** Payment of a reverse mortgage, in whole or in part, shall be permitted without penalty at any time during the period of such reverse mortgage.

**Source: L. 92:** Entire article added, p. 940, § 1, effective April 23.

**11-38-104. Intervening liens.** All advances made under a reverse mortgage and all interest on such advances shall have priority over any lien arising after recording an instrument evidencing the lien arising from such reverse mortgage with the clerk and recorder of the county where the real property securing such reverse mortgage is located.

**Source: L. 92:** Entire article added, p. 940, § 1, effective April 23.

**11-38-105. Interest - periodic advances.** (1) A reverse mortgage may provide for an interest rate which is fixed or adjustable and may also provide for interest that is contingent on the appreciation in the value of the home securing such reverse mortgage.

(2) If a reverse mortgage provides for periodic advances to a borrower, such advances shall not be reduced in amount or number based on any adjustment in the interest rate on such reverse mortgage.

(3) The interest rate contracted for in any reverse mortgage shall not exceed the loan finance charge rates provided by section 5-2-201, C.R.S., although the effective rate may exceed those rates. Such interest rate shall be calculated on the assumption that the reverse mortgage will be repaid according to the agreed terms and will not be repaid before the end of the agreed term.

**Source: L. 92:** Entire article added, p. 940, § 1, effective April 23. **L. 2000:** (3) amended, p. 1872, § 106, effective August 2.

**11-38-106. Lender default.** Any lender failing to make loan advances as required by the terms of the reverse mortgage, and failing to cure such a default as required by such terms, shall forfeit the right to collect any interest on such reverse mortgage and shall be liable for any civil damages arising from such default. This section shall not apply if the default is by an insurance company which is not owned or controlled directly or indirectly by the lender and the default by the insurance company is pursuant to an annuity purchased by a borrower with reverse mortgage loan advances.

**Source: L. 92:** Entire article added, p. 941, § 1, effective April 23.

**11-38-107. Repayment.** (1) A reverse mortgage may become due and payable upon the occurrence of any one of the following events:

- (a) The home securing the reverse mortgage is sold.
  - (b) The borrower ceases to occupy the home as a principal residence.
  - (c) Any fixed maturity date agreed to by the lender and the borrower is reached.
  - (d) An event occurs which is specified in the terms of the reverse mortgage and which jeopardizes the lender's security.
  - (e) Upon death of the borrower.
- (2) The repayment requirement described in subsection (1) of this section is also expressly subject to the following additional conditions:

- (a) Temporary absences from the home not exceeding sixty consecutive days shall not cause the reverse mortgage to become due and payable.
- (b) Temporary absences from the home exceeding sixty consecutive days but not exceeding one year shall not cause the reverse mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender.
- (c) The lender's right to collect reverse mortgage proceeds shall be subject to the applicable statute of limitations for loan contracts pursuant to section 13-80-103.5, C.R.S.; except that the statute of limitations shall commence on the date that the reverse mortgage becomes due and payable.
- (d) Prior to the closing of a reverse mortgage, the lender must prominently disclose any interest or other fees to be charged during the period that commences on the date that the reverse mortgage becomes due and payable and ends when repayment in full is made.

**Source: L. 92:** Entire article added, p. 941, § 1, effective April 23.

**11-38-108. Inapplicability of related statutes.** (1) A reverse mortgage may be made or acquired without regard to the following provisions for other types of mortgage transactions set out in the statutes specified in this subsection (1):

- (a) Any law of this state limiting loan-to-value ratios;
- (b) Prohibitions on balloon payments pursuant to section 5-3-208, C.R.S.;
- (c) Any law of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest;
- (d) Subject to section 11-38-105 (3), interest rate limits under the usury statutes pursuant to sections 5-12-103 and 18-15-104, C.R.S.;
- (e) Any law of this state applicable to insurance or insurance companies under title 10, C.R.S.

**Source: L. 92:** Entire article added, p. 942, § 1, effective April 23. **L. 2000:** (1)(b) amended, p. 1872, § 107, effective August 2.

**11-38-109. Disclosure - total loan cost.** (1) Any lender making reverse mortgage loans shall provide to a borrower prior to closing on such a loan a written statement of the projected total loan cost rate for all reverse mortgage loans except for reverse mortgage loans subject to federal "Truth in Lending Act", as amended, total annual loan cost disclosure requirements. As used in this section, "total loan cost rate" means the total of all loan costs including, but not limited to, any origination fee, closing costs, servicing fee, insurance premium contingent interest based on appreciation, and the annual interest rate charged on the reverse mortgage balance which is expressed as a single annual average rate of interest. Such statement shall include:

- (a) An explanation of why the total loan cost rate on reverse mortgages is greatest in the early years of the loan and decreases over the term of the loan; and
- (b) A chart or table containing projections of the total loan cost rate at certain anniversary dates during the term of the loan, beginning at the end of year two and



thereafter not more than every four years from the date of the loan to year thirty and utilizing not less than three annual average home appreciation percentages from between zero and ten percent.

**Source:** L. 92: Entire article added, p. 942, § 1, effective April 23. L. 96: IP(1) amended, p. 1561, § 14, effective July 1.

**Cross references:** For the "Truth in Lending Act", see 15 U.S.C. sec. 1601 et seq.

**11-38-110. Treatment of reverse mortgage loan proceeds by public benefit programs.** (1) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed funds under a reverse mortgage shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section shall apply to any law relating to means-tested programs of aid provided by this state, including but not limited to supplemental security income, low-income energy assistance, and the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.

**Source:** L. 92: Entire article added, p. 943, § 1, effective April 23. L. 2006: (3) amended, p. 2000, § 40, effective July 1.

**11-38-111. Consumer information and counseling.** No reverse mortgage shall be made by a lender unless the loan applicant attests, in writing, that the applicant has been advised by the lender to obtain independent counseling regarding the advisability of such applicant's entering into a reverse mortgage transaction and that such applicant has either obtained such counseling or waived such counseling in writing.

**Source:** L. 92: Entire article added, p. 943, § 1, effective April 23.

**11-38-112. Application of article.** This article shall apply to all reverse mortgages entered into on and after July 1, 1992, and shall not invalidate any reverse mortgage entered into prior to July 1, 1992.

**Source:** L. 92: Entire article added, p. 943, § 1, effective April 23.

## SAVINGS AND LOAN ASSOCIATIONS

### ARTICLE 40

#### Savings and Loan Association Law

**Cross references:** For the "Unclaimed Property Act", see article 13 of title 38.

**Law reviews:** For article, "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989).

11-40-101.	Short title.	11-40-105.	File annual reports.
11-40-102.	Definitions.	11-40-106.	Annual fees and assessments
11-40-103.	Savings and loan association defined.		- fund.
		11-40-106.5.	Preauthorized transfers - sav-
11-40-104.	Fiscal year - closing dates - net earnings.		ings and loan association
			must have written authoriza-

	tion. (Repealed)		penalty.
11-40-107.	Defamation of associations -	11-40-109.	Suits interfering with business
	penalty.		of association.
11-40-108.	Circulating false information -		

**11-40-101. Short title.** Articles 40 to 46 of this title shall be known and may be cited as the "Savings and Loan Association Law".

**Source:** L. 33: p. 284, § 1. CSA: C. 25, § 1. L. 51: p. 212, § 1. CRS 53: § 122-1-1. C.R.S. 1963: § 122-1-1.

**Cross references:** For additional provisions relating to savings and loan associations, see articles 47 and 48 of this title.

**11-40-102. Definitions.** As used in articles 40 to 46 of this title, unless the context otherwise requires:

(1) "Branch" means any office or other place of business in this state operated by an association other than its principal office in this state where subscriptions are sold, taken, or solicited for shares or stock.

(2) "Certificate value" means the aggregate of payments by a certificate holder on shares evidenced by such certificate, plus dividends credited thereto, less withdrawals thereon.

(3) "Commissioner" means the state commissioner of financial services.

(4) "Division" means the division of financial services.

(5) "Domestic savings and loan association" is one organized under the laws of Colorado and complying with the provisions thereof.

(6) "Dues" means the periodic payments made or to be made by a member in the purchase of savings shares.

(7) "Federal savings and loan association" means one organized or chartered under the "Home Owners' Loan Act of 1933", as may from time to time be amended, or under any federal act which may be enacted as a successor act to regulate the organization and operation of associations formerly organized or chartered under said "Home Owners' Loan Act of 1933". Federal savings and loan associations shall not be subject to the provisions of articles 40 to 46 of this title.

(8) "Foreign savings and loan association" means an association or a holding company of an association which is organized under the laws of any other state or nation, except federal savings and loan associations which are organized under the "Home Owners' Loan Act of 1933", and any amendments thereto.

(9) "Free share" means a share not pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.

(10) "Invested capital" means the aggregate of all certificate values, plus the aggregate par value of all permanent stock issued and paid for, if a permanent stock association.

(11) "Loan share" means a share which has been pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.

(12) "Member" means any person owning or having control of an account with an association evidenced by certificate or passbook or any person borrowing from or assuming a loan held by an association or obligated upon a loan held by an association through purchase or otherwise, or a purchaser of property securing a loan held by an association, or a purchaser of property on a contract from an association.

(12.5) "Net worth" includes the sum of all reserve accounts, undivided profits, permanent stock, preferred stock, and surplus, the principal amount of any subordinated debt securities, and any other account or item included as net worth by regulation of the commissioner or by any law, rule, regulation, order, or decision of the federal deposit insurance corporation or its successor or any other state or federal agency that is applicable to federal savings and loan associations.

(13) "Permanent stock" means stock which cannot be withdrawn or the value paid to the holder thereof until all liabilities of the association have been fully liquidated and paid.



(14) "Share" means a unit having a par value of one hundred dollars evidenced by issued certificate, the certificate value of which represents the proportionate interest of a holder in the association.

(15) "Shareholder" means the holder of shares which may be withdrawn upon due and proper notice in accordance with the bylaws or as the laws of the state may provide and the withdrawal or payment of which is not contingent upon the payment of all liabilities of the association.

(16) "Stockholder" means a holder of permanent stock.

(17) "Subordinated debt security" means any note, secured or otherwise, debenture, or other debt security issued by a savings and loan association which is subordinated or junior, on liquidation or otherwise, to any liability or claim of any order or rank, including all claims having the same priority as or a higher priority than savings account holders.

(18) "Tax and loan account" means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of federal taxes and certain United States' obligations. Tax and loan accounts are not shares, savings or share accounts, savings deposits, or deposit accounts.

**Source:** L. 33: p. 285, § 3. CSA: C. 25, § 3. L. 39: pp. 237, 238, §§ 1-4. CRS 53: § 122-1-3. L. 55: p. 756, § 1. C.R.S. 1963: § 122-1-3. L. 69: p. 1013, § 2. L. 77: (12.5) and (17) added, p. 569, § 1, effective July 1. L. 79: (18) added, p. 430, § 1, effective June 19. L. 88: (8) amended, p. 461, § 5, effective July 1. L. 89: (3) and (4) amended, p. 618, § 7, effective July 1. L. 2004: (12.5) amended, p. 148, § 53, effective July 1.

**Cross references:** For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

#### ANNOTATION

**Law reviews.** For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

**11-40-103. Savings and loan association defined.** A "savings and loan association", within the meaning of articles 40 to 46 of this title, is any domestic or foreign association or corporation formed, created, or organized to carry on the business of a savings and loan association, which is formed to encourage industry, thrift, home building, and saving among its members, by the accumulation of funds through the issuance and sale of its own shares, capital notes, or debentures, the acceptance of savings deposits, or any other manner permitted by the provisions of articles 40 to 46 of this title, the loaning or investment of the funds so accumulated to assist its members in acquiring real estate, in making improvements thereon, and in paying off existing encumbrances thereon, or for any other purposes or in any other manner permitted by the provisions of articles 40 to 46 of this title, and which accumulates funds to be returned to its members.

**Source:** L. 33: p. 284, § 2. CSA: C. 25, § 2. CRS 53: § 122-1-2. C.R.S. 1963: § 122-1-2. L. 69: p. 1013, § 1.

#### ANNOTATION

**For a business with characteristics of a savings and loan association,** see *People ex rel.*

*Griffith v. Standard Home Co.*, 59 Colo. 355, 148 P. 869 (1915).

**11-40-104. Fiscal year - closing dates - net earnings.** (1) Each domestic savings and loan association shall have such fiscal year as may be fixed from time to time by resolution of its board of directors, but the fiscal years of all such associations shall be fixed so as to end as of the last day of a calendar month. Every domestic savings and loan association

shall close its books at least once annually as of the close of business on the last day of its fiscal year and may close its books at such other time as may be fixed by resolution of its board of directors. Any reference in this section or elsewhere in articles 40 to 46 of this title to the closing date of an association means the date fixed for the closing of its books as provided in this section. The books and records of every association shall reflect all the accrued liabilities on the above dates.

(2) The net earnings of each period ending on a closing date fixed as provided in this section shall be determined by deducting from gross income of such periods operating and nonoperating expenses and dividends and interest paid to shareholders or depositors. Expenses shall include:

(a) Charges for estimated depreciation and obsolescence of home office building and furniture and fixtures, with contra credits to a depreciation reserve account;

(b) Charges for all losses actually sustained during such periods from the sale of securities, real estate, or other assets or such portion of such losses as have not been charged to reserves pursuant to the provisions of section 11-42-111.

(3) The remaining balance of gross income thus arrived at is the association's net income and shall be available for dividends on permanent stock or be credited to general reserve accounts or the undivided profits account in a manner as provided in section 11-42-111. Provision may be made for an undivided profits account not to exceed five percent of invested capital, unless an excess amount is approved by the commissioner.

(4) No income shall be considered as earned until collected; except that interest due and unpaid may be accrued for a period of not more than six months and considered as earnings.

**Source:** L. 33: p. 356, § 12. CSA: C. 25, § 80. CRS 53: § 122-1-4. L. 55: p. 756, § 2. C.R.S. 1963: § 122-1-4. L. 69: p. 1014, § 3. L. 73: p. 1236, §§ 1, 2.

**11-40-105. File annual reports.** (1) On or before February 1 in each year, every association shall make an annual written report to the commissioner, in a form to be prescribed by the commissioner, of its affairs and operations for the twelve months ending on December 31 of the previous year.

(2) If any association fails to file such report or if any such report is delayed or withheld beyond the day when the report should be so filed, such association shall forfeit and pay the sum of ten dollars for every day such report is withheld or delayed or not completed, and any member of any association or any party in interest may maintain an action in his or her own name to receive such penalty, and the penalty shall be paid to the state treasurer.

(3) (a) Every association, on or before the first day of the third calendar month after the end of its fiscal year, shall mail to each member or may, at its option, publish in a newspaper of general circulation a report in a form prescribed or approved by the commissioner of its financial condition, setting forth a statement of its assets, liabilities, and reserves in the form of a statement of condition.

(b) Paragraph (a) of this subsection (3) shall take effect July 1, 1973, and shall apply to loans or contracts for loans entered into on or after that date. Nothing in this subsection (3) shall be deemed to affect loans or contracts for loans entered into prior to July 1, 1973.

**Source:** L. 33: p. 355, § 11. CSA: C. 25, § 79. L. 39: p. 252, § 27. CRS 53: § 122-1-5. C.R.S. 1963: § 122-1-5. L. 67: p. 259, §§ 1, 2. L. 73: p. 1236, § 3. L. 2000: (1) and (2) amended, p. 155, § 2, effective August 2.

**11-40-106. Annual fees and assessments - fund.** (1) Every domestic savings and loan association operating in this state shall pay to the division of financial services such fees for administration, supervision, and examination as the commissioner may determine sufficient to meet the budget of the division of financial services as appropriated by the general assembly for the fiscal year commencing July 1. The fees shall be determined as follows:

(a) At least semiannually, the commissioner shall assess each association, based on its total assets, to meet the costs of administration, examination, and supervision by the



division for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total assets but shall in no case exceed in total the costs of administration, examination, and supervision by the division for that fiscal year. The assessment calculation or ratio of the assessment charged to total assets shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.

(b) As of July 1 of each year, the commissioner may estimate a per diem rate to be charged for the examination of each association during the fiscal year. At the conclusion of its examination, each association shall pay the actual cost of the examination, if required by the commissioner.

(c) At least semiannually, the commissioner shall assess each state and federal savings and loan association that has been designated as an eligible public depository, as defined in section 11-47-103 (6), based on its total public deposits held, to meet its share of the division's supervisory costs of monitoring compliance with the provisions of the "Savings and Loan Association Public Deposit Protection Act", article 47 of this title, for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total public deposits held. The assessment calculation, or ratio of the assessment charged to total public deposits held, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.

(d) In the same manner as specified in paragraph (b) of this subsection (1), the commissioner may charge any state or federal savings and loan association that has been designated as an eligible public depository, as defined in section 11-47-103 (6), for the actual cost of any examination necessary to assure its compliance with article 47 of this title.

(2) All fees and collections of every kind shall be transmitted to the state treasurer, who shall credit the same to the division of financial services cash fund, which fund is hereby created in the state treasury. All moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs of the activities of the division of financial services. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

**Source:** L. 33: p. 352, § 4. CSA: C. 25, § 72. L. 39: p. 252, § 25. L. 45: p. 240, § 3. L. 47: p. 317, § 2. CRS 53: § 122-1-6. C.R.S. 1963: § 122-1-6. L. 67: p. 892, § 1. L. 81: (1) amended, p. 619, § 1, effective April 30. L. 83: (1)(c) added, p. 487, § 1, effective May 10. L. 84: (1)(d) added, p. 377, § 1, effective May 11. L. 88: IP(1) and (1)(a) amended, p. 455, § 1, effective March 18. L. 89: IP(1) amended, p. 618, § 8, effective July 1. L. 92: (1)(a) and (2) amended, p. 928, § 6, effective February 25. L. 2004: (1)(a)(II) and (1)(a)(III) amended, p. 135, § 12, effective July 1. L. 2005: (1) amended, p. 14, § 1, effective February 23.

#### **11-40-106.5. Preauthorized transfers - savings and loan association must have written authorization. (Repealed)**

**Source:** L. 88: Entire section added, p. 346, § 10, effective July 1. L. 89: Entire section repealed, p. 592, § 1, effective April 7.

**11-40-107. Defamation of associations - penalty.** Any person who willfully makes, circulates, or transmits any false statement, rumor, report, or suggestion, written, printed, or spoken, concerning the financial condition or management or assets of any savings and loan association, either by name or as a particular group of any particular city, town, or county, which incites the public or any person or creates an impression detrimental to the standing, solvency, or responsibility of said savings and loan association, or which tends to result or results in the withdrawal of funds from such association or in the exchange of shares in savings and loan associations for any other stock, bonds, notes, debentures, or other evidences of indebtedness or for any other property of any kind or character whatsoever, or which tends to result or results in impairing the confidence which may be reposed in said association and any person aiding, advising, and abetting such person in such matters and

things is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment.

**Source:** L. 33: p. 352, § 3. CSA: C. 25, § 71. CRS 53: § 122-1-7. C.R.S. 1963: § 122-1-7.

**11-40-108. Circulating false information - penalty.** Any person who willfully and knowingly concurs in or is responsible, directly or indirectly, for the making, publishing, or posting, either generally or privately, to actual or prospective members or investors of any false or misleading information tending to imply that any other business operated in this state is a savings and loan association or operated in the manner of a savings and loan association or is regulated in whole or in part under the provisions of articles 40 to 46 of this title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars, or by imprisonment in the county jail for a period of not less than six months nor more than one year, or by both such fine and imprisonment.

**Source:** L. 33: p. 359, § 17. CSA: C. 25, § 85. CRS 53: § 122-1-8. L. 63: p. 292, § 12. C.R.S. 1963: § 122-1-8.

**11-40-109. Suits interfering with business of association.** No order, judgment, or decree providing for an accounting of, or enjoining, restraining, or interfering with the transaction of, the business of any savings and loan association organized or doing business under the provisions of articles 40 to 46 of this title shall be made or granted otherwise than upon the application of the attorney general, after his approval of a written request therefor by the commissioner, except in an action by a judgment creditor or in proceedings supplementary to execution.

**Source:** L. 33: p. 358, § 14. CSA: C. 25, § 82. CRS 53: § 122-1-9. C.R.S. 1963: § 122-1-9.

ARTICLE 41

Organization and Powers

**Cross references:** For electronic funds transfers for financial institutions organized under this article, see article 48 of this title.

11-41-101.	General organization.	11-41-112.5.	Savings and loan association as fiduciary.
11-41-102.	Restriction on corporate name.	11-41-113.	Federal home loan bank membership.
11-41-103.	Use of name "savings and loan association" restricted.	11-41-114.	How funds invested.
11-41-104.	Articles of incorporation.	11-41-115.	Interest rates on loans.
11-41-105.	Minimum stock subscription - issuance of preferred stock.	11-41-116.	Where associations may operate.
11-41-106.	Approval of articles of incorporation.	11-41-117.	Insurance of shares.
11-41-107.	Documents deposited with commissioner.	11-41-117.5.	Insurance of obligations.
11-41-108.	Refusal of certificate - appeal.	11-41-118.	Loans - investment in notes or bonds.
11-41-109.	Certificate of approval - where articles filed.	11-41-119.	Loans to members and other loans.
11-41-110.	Body corporate.	11-41-119.5.	Reporting of loans. (Repealed)
11-41-111.	Renewal of corporate life.	11-41-120.	Branches. (Repealed)
11-41-112.	Powers of savings and loan associations.	11-41-121.	Merger, consolidation, and transfer.



11-41-122.	Membership fees.	11-41-130.5.	Cessation of business as an association - amendment of articles.
11-41-123.	Directors and meetings.	11-41-131.	Dissolution.
11-41-124.	Officers or directors to receive no commission.	11-41-132.	Escheat proceedings.
11-41-125.	Loans to officers and directors.	11-41-133.	Acquisition of majority control over an existing association - definitions.
11-41-126.	Bonds of officers.	11-41-134.	Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration.
11-41-127.	Violations - penalties.		
11-41-128.	Acknowledgments.		
11-41-129.	Amendment of articles of incorporation.		
11-41-130.	Reorganization.		

**11-41-101. General organization.** Domestic associations may be incorporated with shares or stock or both and with all the rights, powers, and privileges and subject to all the restrictions set forth in articles 40 to 46 of this title.

**Source:** L. 33: p. 287, § 1. CSA: C. 25, § 4. CRS 53: § 122-2-1. C.R.S. 1963: § 122-2-1.

**11-41-102. Restriction on corporate name.** The name of each domestic association incorporated on or after May 17, 1939, shall include the words "savings and loan association". If the name of the domestic association contains the words "savings and loan association", it need not comply with the requirements of part 6 of article 90 of title 7, C.R.S. No association shall include in its name the words "guaranty" or "guarantee" or "mutual", unless organized without stock, or "permanent", unless organized with stock. The provisions of this section shall not affect the right of any association existing before May 17, 1939, to continue the use of its name.

**Source:** L. 33: p. 287, § 2. CSA: C. 25, § 5. L. 39: p. 238, § 5. CRS 53: § 122-2-2. C.R.S. 1963: § 122-2-2. L. 79: Entire section amended, p. 430, § 2, effective June 19. L. 93: Entire section amended, p. 861, § 28, effective July 1, 1994. L. 2000: Entire section amended, p. 989, § 107, effective July 1.

#### ANNOTATION

**Where the name assumed by a corporation is not in compliance** with this section, all possibility of the mutual rights and obligations which obtain between building and loan asso-

ciations and their members is excluded. Int'l. Improvement Co. v. Wagner, 22 Colo. App. 489, 125 P. 597 (1912).

**11-41-103. Use of name "savings and loan association" restricted.** It is unlawful for any person, firm, company, association, partnership, society, or corporation, either domestic or foreign, to transact business under any name or title which contains the term "savings and loan", or use any sign or circulate or use any letterhead, billhead, circular, or paper whatsoever, or advertise in any manner to indicate that its business is the character or kind of business carried on or transacted by a savings and loan association or which is calculated to lead the public to believe that its business is that of a savings and loan association, unless it is lawfully authorized to do business in this state under the provisions of articles 40 to 46 of this title or its charter and is actually engaged in carrying on a savings and loan business in this state under the provisions of said articles 40 to 46, and, upon action brought by the commissioner, injunction will lie to restrain any person, firm, company, partnership, society, corporation, or agent thereof from continuing to violate any of the provisions of this section.

**Source:** L. 33: p. 359, § 18. CSA: C. 25, § 86. CRS 53: § 122-2-3. C.R.S. 1963: § 122-2-3.

## ANNOTATION

**Law reviews.** For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

**11-41-104. Articles of incorporation.** (1) Any five or more persons who are citizens of this state and who may desire to form a corporation for the purpose of carrying on the business of a savings and loan association shall make, sign, and acknowledge, in triplicate, before some officer competent to take the acknowledgment of deeds, a certificate in writing, known as the articles of incorporation, in which shall be stated:

(a) The name of said association, which shall not be identical with that of any other association in this state nor which so resembles the name of any other association as to be likely to lead to confusion as to its identity;

(b) The objects for which the association is formed;

(c) The name of the city or town and county in this state wherein the principal office of the association is to be located;

(d) In the event it is a permanent stock company, the number of shares of permanent stock authorized and the number of shares of permanent stock subscribed for and the amount of cash actually paid in thereon;

(e) The names of the incorporators, their respective occupations and residence addresses, and a statement of the number of shares or amount of stock subscribed by each and the amount of cash paid upon the shares or stock of each;

(f) The kind or classes of shares or stock the association proposes to issue and a statement of all or any of the designations and the powers, rights, qualifications, limitations, or restrictions in respect of any classes of stock or shares of the association;

(g) That the association shall have perpetual existence;

(h) Whether or not cumulative voting shall be allowed in the election of directors;

(i) That, if such is the case, the association is created for the purpose of carrying on part or all of its business beyond the limits of this state;

(j) The number of directors and the names and residences of the directors who shall serve for the first year of its existence and until their successors are elected and qualified;

(k) A statement as to whether the association is organized to issue and sell its shares and otherwise operate as a share association or to accept savings deposits and operate as a deposit association, as provided by the provisions of articles 40 to 46 of this title.

(2) The certificate may also contain any other provisions which the incorporators may see fit to insert for the regulation and conduct of the affairs of the association, the directors, shareholders, and stockholders, or any class of shareholders or stockholders, but such provisions shall not conflict with the provisions of articles 40 to 46 of this title or the laws of the state of Colorado.

(3) The provisions of this section shall be the exclusive authority for the incorporation of a domestic association, and nothing in either section 11-41-121 (1.5) or 11-41-133 (6) shall be construed or interpreted to authorize the organization of a domestic association by a foreign association by incorporation of a charter de novo.

**Source:** L. 33: p. 288, § 3. CSA: C. 25, § 6. CRS 53: § 122-2-4. C.R.S. 1963: § 122-2-4. L. 69: p. 1014, § 4. L. 88: (3) added, p. 457, § 1, effective July 1.

**Cross references:** For persons before whom acknowledgments may be taken, see § 38-30-126.

**11-41-105. Minimum stock subscription - issuance of preferred stock.** (1) No permanent stock association shall be organized on or after July 1, 1983, unless, prior to the filing of its articles of incorporation, such minimum amount of its permanent stock and paid-in surplus as required by the commissioner has been subscribed for and the same paid for in lawful money of the United States and is in the custody of the persons named in the articles of incorporation as the members of the first board of directors.



(2) Preferred stock may be issued by a permanent stock association at any time and shall have such preferences, powers, conversion provisions, and rights as the board of directors of the association may approve.

**Source:** L. 33: p. 289, § 4. CSA: C. 25, § 7. L. 39: p. 261, § 36. L. 43: p. 200, § 1. CRS 53: § 122-2-5. C.R.S. 1963: § 122-2-5. L. 77: Entire section amended, p. 569, § 2, effective July 1. L. 83: (1) amended, p. 489, § 1, effective April 26.

**11-41-106. Approval of articles of incorporation.** The articles of incorporation of any savings and loan association organized under articles 40 to 46 of this title shall not be filed in the office of the secretary of state of the state of Colorado or be received by the secretary of state for filing unless accompanied by a certificate of approval by the commissioner.

**Source:** L. 33: p. 290, § 5. CSA: C. 25, § 8. L. 39: p. 238, § 6. CRS 53: § 122-2-6. C.R.S. 1963: § 122-2-6.

**11-41-107. Documents deposited with commissioner.** (1) Every domestic savings and loan association proposing to incorporate in this state shall first deposit with the commissioner the following documents:

- (a) Two signed and verified copies of the articles of incorporation of the association;
- (b) Two copies of the bylaws of the association;
- (c) Applications signed and verified by a majority of the initial directors of such association, setting forth: Names and addresses of the proposed incorporators, directors, and officers of such association; a statement of the experience and general fitness of the officers and directors to engage in the savings and loan business; an itemized statement of the estimated receipts and expenditures of such association for the first year showing that such association will have a reasonable chance to succeed in the territory in which it proposes to operate; and such other matters as the commissioner may require. Such application shall be accompanied by a fee in the form of a certified check in the amount established by the commissioner, payable to the division of financial services.

(2) Upon receipt of such documents, the commissioner shall immediately examine and investigate into the advisability of issuing a certificate of approval for such association, and he shall issue such certificate of approval if, upon examination, the commissioner finds:

- (a) That the articles of incorporation comply with all the provisions of articles 40 to 46 of this title;
- (b) That the bylaws comply with the provisions of articles 40 to 46 of this title;
- (c) That the provisions of articles 40 to 46 of this title have been complied with;
- (d) That it is expedient and desirable to permit such association to engage in business;
- (e) That the officers and directors have the experience and general fitness to engage in a savings and loan business;
- (f) That the financial program of the association is sound;
- (g) That the association has a probable chance to succeed;
- (h) That its name is not so similar to that of any other association operating in this state as to mislead the public; but the words "the", "and", "mutual", "permanent", and "savings and loan association" shall not themselves constitute such similarity of names as to be likely to mislead the public.

(3) If the commissioner's finding is adverse to the association in any of the particulars recited in subsection (2) of this section, he shall not issue a certificate of approval.

**Source:** L. 33: p. 291, § 6. CSA: C. 25, § 9. L. 39: p. 238, § 7. CRS 53: § 122-2-7. C.R.S. 1963: § 122-2-7. L. 83: (1)(c) amended, p. 493, § 1, effective July 1. L. 84: (1)(c) amended, p. 377, § 2, effective May 11. L. 89: (1)(c) amended, p. 620, § 13, effective July 1.

**11-41-108. Refusal of certificate - appeal.** If the commissioner, after an examination, believes for any reason that a certificate of approval should not be issued and refuses to

issue the same, he shall file a written statement with a board consisting of the governor, the attorney general, and the state treasurer of the state of Colorado giving in detail his reasons for such refusal. After notice to all concerned and after a hearing, said board may order the commissioner to issue the certificate of approval or may approve his action in refusing a certificate of approval.

**Source:** L. 33: p. 293, § 7. CSA: C. 25, § 10. CRS 53: § 122-2-8. C.R.S. 1963: § 122-2-8.

**Cross references:** For hearing procedures, see § 24-4-105.

**11-41-109. Certificate of approval - where articles filed.** (1) If the commissioner finds affirmatively for the association upon all the matters set forth in section 11-41-107, he shall issue a certificate of approval under his hand and seal, executed in duplicate, within sixty days thereafter, in which shall be recited in substance the following:

- (a) That the articles of incorporation and bylaws have been filed in his office;
- (b) That said articles of incorporation and bylaws conform to the provisions of the law;
- (c) That he has approved the same.

(2) The commissioner shall attach one of said certificates to each copy of the articles of incorporation and shall retain one copy of the articles of incorporation and bylaws in his office and return the other copy of the articles and bylaws, with the certificate of approval attached thereto, to the association. Upon receipt from the commissioner of the articles of incorporation, the association shall file the same with the secretary of state, and certified copies of the articles of incorporation shall be filed by the association in the office of the county clerk and recorder of each county in this state in which said association may own real estate. The failure to file a certified copy in the office of the clerk and recorder of any county in this state shall not affect the validity of the incorporation of any association which has made its filing with the secretary of state and has obtained a certificate of approval. In the event a true copy of such articles of incorporation is presented to the secretary of state with the request that the same be certified, he shall certify the same for a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., which certificate shall contain, in addition to the usual statement, a statement that the same is a true copy of the original articles of incorporation on file in his office and a statement as to the date of the filing of such articles of incorporation. When articles of incorporation or amendments thereto have been filed in the office of the secretary of state, he shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of state under the great seal of the state of Colorado, shall be evidence of the existence of such association and prima facie evidence of the contents of said articles of incorporation or such amendments thereto.

(3) The secretary of state shall charge for the filing of documents for savings and loan associations the same fees that are charged for corporations with like capital stock, as prescribed in the "Colorado Corporation Code", and such fees shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S.

**Source:** L. 33: p. 293, § 8. CSA: C. 25, § 11. CRS 53: § 122-2-9. C.R.S. 1963: § 122-2-9. L. 67: p. 492, § 1. L. 83: (2) and (3) amended, p. 876, § 41, effective July 1.

**Editor's note:** The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in subsection (3) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

**Cross references:** For fees for filing documents under the "Colorado Business Corporation Act", see part 2 of article 101 of title 7.

**11-41-110. Body corporate.** Upon making the articles of incorporation, obtaining a certificate of approval from the commissioner, filing the articles of incorporation and certificate of approval in the office of the secretary of state, and paying the filing fees



therefor to the secretary of state, the persons so associating and their successors and assigns shall, from the date of the filing of the same with the office of the secretary of state, be a body corporate by the name set forth in said articles of incorporation, subject to dissolution as provided in articles 40 to 46 of this title and the laws of Colorado not in conflict with said articles 40 to 46. No association shall cease to exist or expire from neglect on the part of the association to elect officers or directors at the time mentioned in their articles of incorporation and bylaws, and all officers or directors elected by an association shall hold office until their successors are duly elected and qualified.

**Source:** L. 33: p. 295, § 9. CSA: C. 25, § 12. CRS 53: § 122-2-10. C.R.S. 1963: § 122-2-10.

**11-41-111. Renewal of corporate life.** (1) Any association incorporated under any law prior to June 8, 1933, may extend its corporate life upon the affirmative vote of at least a majority of its directors at a special meeting of the board of directors called for that purpose, setting out the purpose of said meeting, and ratified by the written consent of persons holding in the aggregate more than two-thirds in book value of the outstanding stock and shares in such association.

(2) The president or vice-president and the secretary or assistant secretary of said association shall certify the fact, under the seal of said association, and shall make as many certificates as may be necessary so as to file one in the office of the county clerk and recorder in each county wherein the association may do business, one in the office of the secretary of state, and one in the office of the commissioner, and thereupon the corporate life of said association shall be renewed in perpetuity, or for the term mentioned in the certificate, upon filing such certificate in the office of the secretary of state. All stockholders or shareholders have the same rights in the new association, so extended, as they had in the association as originally formed.

(3) The extension of the term of existence of any such association in the manner provided shall not be so construed as enlarging any of the powers, privileges, or franchises theretofore enjoyed by such association. Upon the proper filing of any certificate of extension mentioned in articles 40 to 46 of this title, the corporate existence shall be considered as extended and continuous for the period specified in such certificate from the date of the previous expiration of such corporate existence, and said association shall be considered as then having had a continuous corporate existence to the time of the filing of such certificate of renewal.

**Source:** L. 33: p. 295, § 10. CSA: C. 25, § 13. CRS 53: § 122-2-11. C.R.S. 1963: § 122-2-11.

**11-41-112. Powers of savings and loan associations.** (1) Savings and loan associations have the following powers:

- (a) To have succession of its corporate name;
- (b) As to all associations incorporated prior to June 8, 1933, to have existence for the period named in their articles of incorporation and, on the termination of such period, perpetually if so provided in the extension;
- (c) As to all associations incorporated under articles 40 to 46 of this title, to have existence perpetually;
- (d) To sue and be sued in any court of law or equity;
- (e) To have a corporate seal and to alter the same and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise;
- (f) To appoint such officers and agents as the business of the association shall require and allow them reasonable compensation;
- (g) To make bylaws, not inconsistent with the constitution or laws of the United States or of this state or the provisions of articles 40 to 46 of this title, and alter the same at pleasure, and make all needed rules and regulations for the transaction of its business and the control of its property and affairs, if a certified copy of same has been filed with the

commissioner. The bylaws of an association may be amended either by the stockholders or shareholders at their annual meeting or by the board of directors of an association at any regular meeting of the board of directors; but no change in the bylaws shall take effect until approved by the commissioner.

(h) To acquire, hold, mortgage, and convey all such real estate and personal property as may be transferred to it in the operation of its business;

(i) To levy, assess, and collect from its shareholders such sums of money by way of installment dues and interest on loans as the association may provide in its bylaws;

(j) To issue and sell shares as provided in sections 11-42-101 to 11-42-106 or, in the case of deposit associations operated under the provisions of section 11-42-125, to accept savings deposits as provided by such section;

(k) To redeem its shares and repay the funds acquired thereby with such earnings as the same may be entitled according to the terms of the issue thereof if the same are no longer required for the purposes of the association;

(l) To act as a trustee, custodian, or manager or in any other fiduciary capacity to the same extent authorized and permitted from time to time by the laws and regulations applicable to federal savings and loan associations in Colorado, and upon specific approval by the commissioner, by permission granted such federal associations by the federal office of thrift supervision or its successor, including specifically, but without limitation, the power to act as the trustee, custodian, or manager of any trust created or organized in the United States and forming a part of a stock bonus, pension, profit-sharing, or retirement plan that is qualified for specific tax treatment under the provisions of the federal "Self-Employed Individuals Tax Retirement Act of 1962", as from time to time amended or supplemented, or under the provisions of any other act of congress enacted after June 2, 1971, as a substitute or replacement for the federal "Self-Employed Individuals Tax Retirement Act of 1962" or under the provisions of the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. sec. 1001 et seq., as from time to time amended or supplemented. The association managing funds of any such plan, trust, or fund shall have, to the extent applicable to federal savings and loan associations in Colorado, all of the rights, powers, privileges, and immunities and shall be subject to the same obligations and duties as an individual fiduciary under like circumstances with power to make investments. All funds held in such fiduciary capacity by any association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this paragraph (l). An association acting as a trustee may control accounts in or securities of such association pursuant to the exercise of its authority as a trustee. The exercise by an association of any authority vested in it shall not affect any other authority of such association.

(m) To, subject to the regulations of the United States treasury department and the federal office of thrift supervision or its successor, establish a tax and loan account and serve as a depository for federal taxes or as a treasury tax and loan depository, and to satisfy any requirement in connection therewith;

(n) To provide in its articles of incorporation for the elimination or limitation of the personal liability of a director to the corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for: Any breach of the director's duty of loyalty to the corporation or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(o) Pursuant to federal law or under such rules and regulations as may be prescribed by the financial services board and subject to regulations promulgated by the commissioner of insurance concerning the sale of insurance by savings and loan associations as provided in section 10-2-601, C.R.S., to act as the agent, through the savings and loan association or any service corporation thereof, for any fire, life, or other insurance company authorized to do



business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For services so rendered, such savings and loan association or service corporation of such savings and loan association may receive such fees or commissions as may be agreed upon between such entity and the insurance company for which it may act as agent.

**Source:** L. 33: p. 295, § 11(1)-(11). CSA: C. 25, § 14. CRS 53: § 122-2-12. C.R.S. 1963: § 122-2-12. L. 69: p. 1014, § 5. L. 71: p. 1145, § 1. L. 79: (1)(m) added, p. 430, § 3, effective June 19. L. 81: (1)(l) amended, p. 622, § 1, effective May 18. L. 87: (1)(n) added, p. 368, § 6, effective May 20. L. 97: (1)(o) added, p. 432, § 9, effective April 24. L. 2004: (1)(l) and (1)(m) amended, p. 135, § 13, effective July 1.

**Cross references:** For the "Self-Employed Individuals Tax Retirement Act of 1962", see Pub.L. 87-792, 76 Stat. 809; for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

### ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988).

**A savings and loan association may not by bylaw repeal the right of withdrawal of a member without his consent.** Holyoke Bldg. & Loan Ass'n v. Lewis, 1 Colo. App. 127, 27 P. 872 (1891).

**A holder of note of an association is precluded from selling collateral.** The holder of a note against a building and loan association is precluded from resorting to a sale of his collateral security to satisfy the same; his recourse, where the association is in receivership, being to file his claim in due course. Reserve Bldg. & Loan Ass'n v. Jamison, 108 Colo. 503, 119 P.2d 621 (1941).

**11-41-112.5. Savings and loan association as fiduciary.** It is unlawful for a savings and loan association to act as fiduciary, other than as escrow agent, unless it is authorized to do so by the commissioner.

**Source:** L. 81: Entire section added, p. 623, § 2, effective May 18.

**11-41-113. Federal home loan bank membership.** (1) Any savings and loan association organized and incorporated under the laws of this state as a savings and loan association that is eligible to become a member of the federal home loan bank, in accordance with the provisions of the act of congress known and cited as the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., approved July 22, 1932, is authorized to subscribe for stock of the federal home loan bank for the district in which it is located and to invest its funds in such stock for the purpose and to the extent required and permitted by the provisions of the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, and is further authorized to furnish to the federal office of thrift supervision or its successor and to the federal home loan bank reports of examinations of such associations made by the commissioner, and is further authorized to consent to an examination to be made by the federal office of thrift supervision or its successor or the federal home loan bank, and is further authorized to do all other things as may be required by the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, necessary to obtain and to continue membership in the federal home loan bank and to obtain advances therefrom or that may be incidental to acquiring or holding membership and to obtaining advances therefrom, and is authorized to assume all the duties, obligations, responsibilities, and liabilities and become entitled to all the benefits provided in the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq.

(2) Any savings and loan association has the power to borrow money from the federal home loan bank, when authorized by resolution of its board of directors, upon such terms and rates of interest as may be agreed upon and is authorized to assign and pledge its notes,

bonds, mortgages, or other property and to repledge the shares of stock pledged to it as collateral security without securing the consent of the owner thereto as security for the repayment of its indebtedness for money borrowed.

(3) Such pledgee of any note or other evidence of indebtedness due to an association has the right to enforce in its own name or in the name of the association all appropriate remedies to enforce collection, whether or not the shares described in connection with said note are held by such pledgee. Any obligation incurred by or loan made to an association shall constitute a claim against the association's assets and shall be payable in advance of and by preference over all claims or rights of the shareholders or stockholders of such association and shall be prior to and outrank any demand or application for withdrawal or cancellation of all classes of shares or stock or units or certificates in said association including prepaid and matured shares. The existence of a withdrawal list consisting of members desiring to withdraw from the association shall not prevent the board of directors of such association, in its discretion, from borrowing money from the federal home loan bank, to be used for the purpose of making mortgage loans to the members of the association or retiring bank loans, in which event all such amount of borrowed money may be exclusively used for the purpose borrowed or for other purposes, subject to the approval of the commissioner; but no savings and loan association shall at any time borrow money from the federal home loan bank in an amount exceeding any limit fixed by the laws of this state.

(4) Any savings and loan association having funds in its treasury for investment, which funds are deemed by it to be in excess of the amount needed for loans to its members and for the payment of matured shares and withdrawals, has the power to invest such portion of these excess funds in the obligations, bonds, debentures, and other securities of the federal home loan bank; but such investments may not be made in an amount in excess of the limit, if any, provided by the laws of this state for investment of funds in classes of investment other than in mortgage loans to members of the association.

(5) Any officer, director, trustee, attorney, or agent of a savings and loan association, or other borrower, acting as agent for a federal home loan bank in the collection of interest, amortization, or installment payments on collateral deposited with said bank, who applies the proceeds of such collections otherwise than as provided in the agreement with the bank is guilty of theft and shall be subject to the punishment provided by the laws of this state for that offense.

**Source:** L. 33: p. 300, § 11(12). **CSA:** C. 25, § 14. **CRS 53:** § 122-2-13. **C.R.S. 1963:** § 122-2-13. **L. 2004:** (1) amended, p. 136, § 14, effective July 1.

**11-41-114. How funds invested.** (1) Any savings and loan association may invest any portion of its funds in any of the following:

(a) Loans to its members, secured by first lien trust deeds or mortgages upon improved real estate, and upon such plans of repayment, as provided in section 11-41-119, and in such other loans to its members as the commissioner may approve;

(b) Bonds and other obligations of, or guaranteed as to interest and principal by, the United States;

(c) Bonds or debentures issued by any federal home loan bank in accordance with the provisions of the "Federal Home Loan Bank Act";

(d) Consolidated federal home loan bank bonds or debentures issued by the federal home loan bank administration in accordance with the provisions of the "Federal Home Loan Bank Act";

(e) Bonds or debentures issued by the federal deposit insurance corporation or its successor in accordance with the provisions of Title IV of the "National Housing Act", and any amendments thereto;

(f) Insured shares of savings and loan associations to the extent that each investment is insured by the federal deposit insurance corporation or its successor and uninsured shares of savings and loan associations but not to exceed ten thousand dollars in any one uninsured association, if such associations are incorporated under the laws of this state or the federal government and are doing business in this state and if such associations are functioning and



operating without any restrictions imposed by order of the commissioner or federal home loan bank administration;

(g) Bonds and legal registered warrants as are a direct obligation of the state of Colorado or of any county, city and county, school district, or incorporated city or town therein which has continuously existed as a lawful corporation for a period of at least fifteen years prior to the date thereof and whose bonds have not been in default as to principal or interest for a period of five years prior to the purchase of the same by any savings and loan association;

(h) Other investments, as approved by the commissioner, in which and to the same extent that savings and loan associations, chartered in accordance with the provisions of the "Home Owners' Loan Act of 1933", as amended, may invest;

(i) (I) Capital stock, obligations, or other securities of any corporation, if such corporation is engaged only in such businesses and activities as may be engaged in by corporations whose capital stock is a lawful investment for federal savings and loan associations under the laws, rules, and regulations applicable to all federal savings and loan associations similarly situated. The maximum total investment by any association in any such corporation or combination of corporations shall not exceed the maximum investment which federal savings and loan associations are permitted to maintain in capital stock, obligations, or other securities of similar corporations.

(II) In addition to the maximum total investment provided in subparagraph (I) of this paragraph (i), an association may invest an additional three percent of its assets in such corporation or combination of corporations solely for residential real estate development through joint ventures. Nothing in this subparagraph (II) shall authorize participation in such joint ventures conditioned upon utilization of any real property held, directly or indirectly, by such corporation. This subparagraph (II) shall not be construed to authorize such corporation or combination of corporations to invest in real property unless such investment is initiated through a joint venture.

(III) No association organized under the laws of this state shall acquire the capital stock, obligations, or other securities of any such corporation until there has been filed in the office of the commissioner a statement by such corporation agreeing to permit, and pay all costs of, such examinations or audits of the corporation by the commissioner as he deems necessary in order to confirm compliance with the provisions of this paragraph (i).

(j) Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under Title I of the "Housing and Community Development Act of 1974", as amended, but no investment in real property may exceed an aggregate investment of two percent of the assets of the association;

(k) Loans as to which the association has the benefit of any guaranty under Title IV of the "Housing and Urban Development Act of 1968", as amended, or under part B of the "Urban Growth and New Community Development Act of 1970", as amended, or under section 802 of the "Housing and Community Development Act of 1974", as amended, or of a commitment or agreement therefor;

(l) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment located in any state in the United States and such investment shall be in accordance with the laws of this state.

(2) In addition to the acceptance of deposit or share accounts, any association may borrow money and negotiate for and receive such long-time or short-time loans evidenced by notes, bonds, debentures, or other securities as may be found necessary to advance the purposes of the association, subject to any limitations as to the total aggregate amount of such borrowings contained in the charter or articles of incorporation of the association or imposed by rules and regulations duly adopted by the commissioner. Except as limited by the terms of its charter or articles of incorporation or by duly adopted rules and regulations of the commissioner, an association may secure such borrowings by the mortgage, pledge, collateral assignment, or other hypothecation of its properties, including a trust or pool or mortgages or other encumbrance held by it. Without limiting the generality of the foregoing, an association may issue and sell securities guaranteed pursuant to section 306 (g) of the

“National Housing Act”, as amended, and may secure such securities as permitted in this subsection (2) and may issue and sell any other guaranteed or unguaranteed securities of a type or kind which may be issued and sold by federal savings and loan associations and secure the same with the property of the association to the same extent as permitted for federal savings and loan associations.

(3) Any association may invest in real estate or interests therein, including buildings and related parking facilities, for use in the conduct of the business of the association or for the conduct of such business and for rental to others of excess space; but no such investment may be made without the prior approval in writing of the commissioner if the total amount of all of such investments made by the association exceeds the aggregate amount of the association’s general reserves, undivided profits, and surplus. A permitted investment under the foregoing provision shall be deemed to include the ownership of stock of a wholly-owned subsidiary corporation having as its exclusive activity the ownership and management of such property or interests.

(4) An association may loan an amount not exceeding three percent of the association’s assets in a manner not otherwise authorized by articles 40 to 47 of this title, on condition that such loans are related to real estate or housing.

(5) An association may invest in real estate, real estate interests, and real estate related enterprises for the purpose of producing income, for inventory and sale, improvement, or rental by direct purchase or otherwise. The maximum total investment by an association pursuant to this subsection (5) shall not exceed ten percent of its assets reduced by the amount invested by the association in real estate through service corporations pursuant to paragraph (i) of subsection (1) of this section. In connection with such investment, the association may exercise all rights of an owner.

**Source:** L. 33: p. 303, § 11(13). CSA: C. 25, § 14. L. 39: p. 240, §§ 10, 11. L. 45: p. 238, § 1. CRS 53: § 122-2-14. L. 57: p. 650, § 1. L. 59: p. 664, § 6. C.R.S. 1963: § 122-2-14. L. 69: p. 1014, § 6. L. 71: pp. 1145, 1146, §§ 2, 3. L. 72: p. 617, § 151. L. 77: (4) added, p. 570, § 3, effective July 1. L. 79: (1)(j), (1)(k), and (1)(l) added, p. 431, § 4, effective June 19. L. 83: (1)(i) amended, p. 495, § 1, effective May 25. L. 85: (5) added, p. 397, § 2, effective May 16. L. 2004: (1)(e) and (1)(f) amended, p. 149, § 54, effective July 1.

**Cross references:** For other legal investments, see §§ 32-4-544 and 32-11-810; for the “Federal Home Loan Bank Act”, see Pub.L. 72-304, codified at 12 U.S.C. sec. 1421 et seq.; for the “National Housing Act”, see Pub.L. 73-479, codified at 12 U.S.C. sec. 1710 et seq.; for the “Home Owners’ Loan Act of 1933”, see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.; for the “Housing and Community Development Act of 1974”, see Pub.L. 93-383, 88 Stat. 633 (1974); for the “Housing and Urban Development Act of 1968”, see Pub.L. 90-448, 82 Stat. 476 (1968); for the “Urban Growth and New Community Development Act of 1970”, see Pub.L. 91-609, 84 Stat. 1791 (1970).

## ANNOTATION

**Law reviews.** For article, “The Convertible, Participating Mortgage: Planning Opportu-

nities and Legal Pitfalls in Structuring the Transaction”, see 54 U. Colo. L. Rev. 295 (1983).

**11-41-115. Interest rates on loans.** (1) Any savings and loan association may charge, contract for, and recover such rate of interest as may be provided in the notes or other evidences of indebtedness taken by the association. Notes secured solely by the pledge of shares and notes secured by real estate mortgages repayable upon the sinking fund plan shall be nonnegotiable in form, and all other notes, including those insured by the federal housing administrator and those taken in connection with loans to veterans under the provisions of the “Servicemen’s Readjustment Act of 1944”, may be either negotiable or nonnegotiable in form.

(2) A substantial portion of the business of all associations shall be devoted to the acceptance of savings deposits from or the sale of their shares to their members and the lending of those funds to their members as set forth in section 11-40-103 and otherwise in



articles 40 to 46 of this title, but associations may also purchase loans of a type which they are permitted to make and sell loans with or without recourse so long as such purchase or sale of loans is conducted as a part of and in connection with the other permitted business activities of an association.

(3) Each mortgage loan sold by an association may be sold with or without recourse and, if under a contract to service the same, shall be sold on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.

(4) No interest that may accrue to an association shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this state.

(5) No law of this state limiting interest or interest rates or the compounding of interest shall apply to any graduated payment mortgage or deed of trust made to individuals, or any mortgage or deed of trust to individuals where periodic disbursement of part of the loan proceeds is made by an association over a period of time as established by the mortgage or deed of trust, or over an expressed period of time ending with the death of such individuals, including but not limited to mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

**Source:** L. 33: p. 305, § 11. CSA: C. 25, § 14. L. 45: p. 239, § 2. CRS 53: § 122-2-15. C.R.S. 1963: § 122-2-15. L. 71: p. 1146, § 4. L. 79: (5) added, p. 431, § 5, effective June 19. L. 83: (3) amended, p. 493, § 2, effective July 1. L. 94: (3) amended, p. 66, § 8, effective July 1.

**Cross references:** For the "Servicemen's Readjustment Act of 1944", see Pub.L. 78-346, 58 Stat. 284 (1944).

#### ANNOTATION

**Law reviews.** For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

**Applied in** Haugen v. Western Fed. Sav. & Loan Ass'n, 633 P.2d 497 (Colo. App. 1981).

**11-41-116. Where associations may operate.** Upon approval of the commissioner, a savings and loan association may conduct business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries, and have one or more offices out of this state, and own, hold, purchase, mortgage, lease, and convey real and personal property out of this state if such powers are included within the objects set forth in its articles of incorporation and are not in violation of any other provision of articles 40 to 46 of this title.

**Source:** L. 33: p. 296, § 11. CSA: C. 25, § 14. CRS 53: § 122-2-16. C.R.S. 1963: § 122-2-16.

**11-41-117. Insurance of shares.** (1) A savings and loan association shall obtain and maintain insurance of its shares with the federal deposit insurance corporation or its successor as provided by the "Federal Deposit Insurance Act", 12 U.S.C. 1811, et seq., and any amendments thereto. Notice of any such actions by associations shall be submitted to the division.

(2) The commissioner, in connection with all such insured associations, shall furnish said insurance corporation with reports of examination, orders, and requirements issued in connection therewith and other information coming to his attention bearing on the financial condition and administration and may collaborate with said corporation in any merger, reorganization, dissolution, liquidation, or examination and audit of any such insured association.

**Source:** L. 33: p. 241, § 13. CSA: C. 25, § 14(1). CRS 53: § 122-2-17. C.R.S. 1963: § 122-2-17. L. 87: (1) amended, p. 466, § 1, effective July 1. L. 2004: (1) amended, p. 137, § 15, effective July 1.

**11-41-117.5. Insurance of obligations.** (1) A savings and loan association shall obtain and maintain insurance of its obligations, including accounts, with the federal deposit insurance corporation or its successor.

(2) (a) An association is further authorized to obtain and maintain insurance of any obligations, including accounts, or portions thereof not otherwise insured pursuant to subsection (1) of this section, with any federal agency, with any state agency, or with any other insurer meeting the requirements of paragraph (b) of this subsection (2).

(b) Any insurer insuring obligations pursuant to paragraph (a) of this subsection (2), other than the federal deposit insurance corporation or its successor shall be certified by the commissioner as having met the following:

(I) The contract of insurance contemplated is written upon substantially the same basis as to form, coverage, maturity, voluntary and involuntary termination, and other provisions as the insurance contract provided at that time by the federal deposit insurance corporation or its successor and complies with such further requirements for protection as the commissioner may promulgate by rule.

(II) The insurer has a net worth or, in the case of a governmental or statutorily authorized entity, reserves reasonably commensurate with the risks underwritten.

(III) The insurer, if a nongovernmental entity, is authorized to do business in this state as an insurer or is otherwise authorized by law to insure obligations.

(3) Within twenty days after June 30 and December 31 of each year, each insurer certified pursuant to paragraph (b) of subsection (2) of this section shall file with the commissioner a report for the preceding six months showing its financial condition. Said report shall be prepared, insofar as possible, in conformity with generally accepted accounting principles.

(4) The commissioner or his duly designated representative may investigate the affairs and examine the books, accounts, records, and files of the insurer at such intervals as the commissioner deems prudent, but not less than once a year, and shall have free access for such purposes. Costs of such investigations and examinations shall be paid by the insurer. If any such investigation or examination reveals that the insurer is not conducting its affairs in accordance with this section or that the insurer is not actuarially sound or is impaired and may be unable to fulfill its obligations, the commissioner may exercise any powers available under article 44 of this title until such time as compliance is restored or the impairment is terminated.

(5) The commissioner and the insurer may exchange information regarding an insured savings and loan association.

(6) The commissioner shall determine as of June 30 each year the cost of supervision of the insurer and shall assess such cost against the insurer. The assessment shall be paid on or before September 30 following assessment.

**Source:** L. 83: Entire section added, p. 497, § 1, effective May 26. L. 84: (3) to (6) added, p. 378, § 3, effective May 11. L. 87: (1) amended, p. 466, § 2, effective July 1. L. 2004: (1), IP(2)(b), and (2)(b)(I) amended, p. 137, § 16, effective July 1.

**11-41-118. Loans - investment in notes or bonds.** (1) Savings and loan associations are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator and to obtain such insurance;

(b) To make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure and to obtain such insurance.

(2) Associations may sell any loans authorized by this section, and each such loan sold by an association shall be sold without recourse and, if under a contract to service the same, on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.

(3) It shall be lawful for savings and loan associations to invest their funds and the moneys in their custody or possession which are eligible for investment in notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, and in



obligations of national mortgage associations or similar credit institutions organized under Title III of the "National Housing Act", and in debentures issued by the federal housing administrator.

(4) No laws of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount, or form of such security, or prescribing or limiting the period for which loans or investments may be made, or affecting the negotiability of the loan instrument shall be deemed to apply to loans or investments made pursuant to this section.

(5) An association may make loans for the purpose of mobile home financing, subject to any limitation as to maximum loan amounts which may be prescribed from time to time by the commissioner for all associations. For the purposes of this subsection (5), "mobile home" means a mobile accommodation used or designed for use as living quarters.

(6) An association may make loans for the repair, equipping, alteration, or improvement of any real property, including mobile homes, subject to such restrictions, limitations, prohibitions, conditions, and provisions as the commissioner may from time to time, by rule or regulation duly adopted, prescribe.

(7) An association may make loans or invest in obligations and advances of credit, referred to in this article as "loans", for the payment of expenses for postsecondary school education; but the total aggregate principal amount of an association's investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, shall not exceed five percent of its invested capital.

(8) An association may issue letters of credit, subject to regulation by the commissioner pursuant to section 11-44-103.

**Source:** L. 33: p. 242, § 14. CSA: C. 25, § 14(2). L. 43: p. 201, § 3. CRS 53: § 122-2-18. C.R.S. 1963: § 122-2-18. L. 69: p. 1015, § 7. L. 73: p. 237, § 16. L. 75: (5) and (6) amended, p. 1464, § 2, effective July 18. L. 76: (6) amended, p. 394, § 1, effective April 19. L. 79: (6) amended, p. 431, § 6, effective June 19. L. 83: (8) added, p. 499, § 1, effective July 1.

**Cross references:** For the "National Housing Act", see Pub.L. 73-479, codified at 12 U.S.C. sec. 1701 et seq.

**11-41-119. Loans to members and other loans.** (1) An association may invest any portion of its funds in loans to its members, secured by first lien trust deeds or mortgages upon improved real estate; except that additional loans or advances on the same property secured by additional encumbrances shall be deemed to be first liens for the purposes of articles 40 to 46 of this title, unless an intervening lien has been recorded, and upon the shares issued by such association, or upon both such securities; and except that, only in the case of an association not subject to regulation by the federal deposit insurance corporation or its successor, no one loan can be made in excess of five percent of the gross assets of the association at the close of the preceding month, nor in any event shall the total of loans in excess of fifty thousand dollars exceed twenty percent of the gross assets of the association at the close of the preceding month.

(2) An association may make loans on the security of its shares if the association obtains a first lien upon, or a pledge of, such account as security therefor. No such loan may exceed the withdrawal or repurchase value of the account securing the loan, and no such loan shall be made when there is an impairment of invested share capital or when the association has any application for withdrawal which has been on file and unpaid more than thirty days. Upon any default of such loan, the association may, after giving ten days' written notice to the last address of the owner of such account appearing on the books of the association, cancel such account, to the extent and in the amount sufficient to repay said loan and accrued interest thereon. The commissioner may prescribe such regulations concerning such certificate share loans as may be necessary.

(3) An association may make real estate loans, secured by encumbrances provided for in subsection (1) of this section, repayable upon the following plans:

(a) (I) Installment loans. Loans may be made or purchased for an amount not in excess of ninety-five percent of the appraised value of the tendered security, repayable within forty years in consecutive monthly, quarterly, or annual installments, equal or unequal. Lump-sum payments may be required in the initial contract. The provisions and limitations of this paragraph (a) shall not apply if authority is otherwise permitted by federal law, rule, or regulation.

(II) The initial contract may provide for changes in the interest rate based upon an index agreed to by the borrower and the association. Such provision shall specify that changes in the index shall apply equally to increases or decreases in the interest rate. Decreases shall be mandatory and increases may be at the option of the association. Interest changes may be implemented through changes in the installment amount or the rate of amortization, or any combination thereof, as provided in the initial contract. The installment amount may not be increased more often than at the end of any consecutive twelve-month period of the loan term, and shall be sufficient to amortize the remaining principal balance within forty years from the initial date of the loan.

(b) Loans without amortization. Loans of any type that an association may make on an installment basis may also be made without amortization of principal; but interest shall be payable at least annually, and any such loan may be made for an amount not in excess of eighty percent of the appraised value of the property and for a term of not more than twenty years. The aggregate amount of such loans shall not, at any time, exceed an amount equal to twenty percent of the association's gross assets. In no case may an association provide a loan or loans under this subsection (3) to any one borrower which exceeds five percent of the association's gross assets.

(c) Construction loans. Loans may be made without full amortization of principal if made for the purpose of construction; but any such loan may be made for an amount not in excess of ninety percent of the appraised value of the property, excluding cost of land, and for a term of not more than one year.

(d) Sinking fund loans. Loans made under this plan shall be repayable by crediting to such loans the certificate value of pledged savings shares. Such borrowing members shall be required to carry such monthly periodical savings shares with the association as shall have a par value equal to the loan, and every share issued shall be subject to a lien for any advance made thereon or other lawful claims against the holder, and the payments on such pledged shares shall not be less than thirty-five cents per share per month. At the beginning of foreclosure of any mortgage or trust deed to an association securing such sinking fund loans, credit shall be allowed on the mortgage indebtedness for the value of any pledged shares held by the association as collateral for the loan, and the shares shall be cancelled at the conclusion of the foreclosure proceedings.

(e) Insured or guaranteed loans. An association may make such loans as may be insured or guaranteed by an agency of the federal or state government in such amounts and upon such terms as may be provided by the statutes and regulations affecting such loans, and the proviso in paragraph (a) of this subsection (3) shall not apply to such insured or guaranteed loans.

(4) Other loans. Any association operating under articles 40 to 46 of this title, notwithstanding anything to the contrary contained therein, may make any type or kind of loan and for any purpose that a federal savings and loan association at any time may be authorized to make by any law, rule, regulation, decision, or order which is or may be applicable to federal savings and loan associations. The commissioner, by rule or regulation duly adopted and applicable to all associations, may also authorize all associations organized and operating under articles 40 to 46 of this title to make any investment, in addition to those expressly permitted by said articles 40 to 46, which federal savings and loan associations are authorized to make by any laws, rules, regulations, decisions, or orders applicable to such federal savings and loan associations; but any rule or regulation adopted by the commissioner granting other investment authority shall, to the extent found by the commissioner to be applicable, be subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.



(5) Loans secured by first lien trust deeds or mortgages upon improved real estate shall not be made until a signed application for such loan has been submitted, nor until a signed appraisal has been submitted, nor until the loan has been approved by the board of directors or by a committee authorized by the board of directors. Appraisals may be made by any two of the association's directors, officers, employees, or attorneys or by an independent appraiser who is not a director, officer, employee, or attorney of the association; but no such officer, director, employee, or attorney shall act as an appraiser nor act on any committee approving a loan in which he has an interest either in the property tendered as security or in the sale of the property. The association shall furnish to each borrower, upon the closing of the loan, a loan settlement statement, indicating in detail the charges or fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan, and a copy of such statement shall be retained in the records of the association.

(6) Every real estate loan shall be evidenced by a proper instrument in writing obligating the borrower to repay the full amount of the loan and shall be secured by a mortgage or deed of trust constituting a first lien upon real estate securing the loan or, if an additional advance, by a deed of trust or mortgage properly providing for such additional advance. An encumbrance shall provide specifically for full protection to the association with respect to usual insurance risks, taxes, special assessments, other governmental levies, and maintenance and repairs and may provide for an assignment of rents and the appointment of a receiver upon any default.

(7) An association may pay taxes, special assessments, insurance premiums, repairs, and other charges for the protection of the real estate security. All such payments may be charged to a special account or may be added to the unpaid principal balance of the loan and shall be equally secured by the first lien on the real property. An association may require life insurance to be assigned as additional security upon any real estate loan; in such event, the association shall obtain a first lien upon such policy and may advance premiums thereon, and such premium advances may be added to the unpaid principal of the loan and shall be equally secured by the first lien on the security property.

(8) An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, a prorated portion of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing the loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be adjusted by the association as the need therefor arises. Every association shall keep an accurate record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and other property owned by it.

(9) Payment on the principal indebtedness of all loans on real estate security shall be applied directly to the reduction of such indebtedness. Payments on all monthly installment loans, other than construction loans, insured loans, and guaranteed loans, shall begin not later than sixty days after the date of the note. Insured loans and guaranteed loans may be repayable upon terms acceptable to the insuring or guaranteeing agency. An association may charge, for the privilege of prepayment in part or in full of a loan relating to an owner-occupied single family residence, if the original contract so provides, an amount not greater than ninety days' interest on the amount prepaid. An association may charge, for the privilege of prepayment in part or in full for any loan not otherwise specifically provided for in this subsection (9), an amount specified in the original contract. Any loan contract may be modified by the parties by written agreement and within the limitations of this section as the need therefor may arise.

(10) An association may make additional advances secured by the original encumbrance if the original loan contract makes proper provision therefor.

(11) An association may purchase loans of any type that it may make, and it may also purchase insured or guaranteed loans made on homes wherever located; but no loan may be purchased from an affiliated company or an officer, director, employee, or attorney of the association without prior approval of the board of directors.

(12) If additional collateral is encumbered on any loan as additional security, an association may invest in said loan for an amount in excess of the percentage provided in

paragraph (c) of subsection (3) of this section. Said association may accept as such additional collateral any security it is authorized to invest in as set forth in section 11-41-114; but such encumbered additional security shall not increase the maximum percentage of said loan beyond the actual value of such additional security.

(13) An association may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation organized under article 33.5 of title 38, C.R.S., and as defined by section 216 of the federal "Internal Revenue Code of 1986", as amended, and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property covered by such cooperative housing corporation, if all of the real property owned by such corporation is located within the state and if such loan is made subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.

**Source:** L. 39: p. 245, § 18. CSA: C. 25, § 14(3). CRS 53: § 122-2-19. L. 55: p. 757, § 3. L. 61: p. 649, § 1. C.R.S. 1963: § 122-2-19. L. 65: p. 970, § 1. L. 69: p. 1015, § 8. L. 75: (4) amended, p. 373, § 2, effective June 26. L. 77: (3)(a) and (4) amended, p. 570, §§ 4, 5, effective July 1. L. 80: (13) added, p. 706, § 3, effective July 1. L. 81: (3)(a) and (3)(b) amended, p. 625, § 1, effective May 26. L. 83: (9) amended, p. 500, § 1, effective April 29. L. 2000: (13) amended, p. 1841, § 13, effective August 2. L. 2004: (1) amended, p. 149, § 55, effective July 1.

**Cross references:** For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

#### **11-41-119.5. Reporting of loans. (Repealed)**

**Source:** L. 88: Entire section added, p. 457, § 2, effective July 1. L. 96: Entire section repealed, p. 30, § 3, effective March 13.

#### **11-41-120. Branches. (Repealed)**

**Source:** L. 33: p. 306, § 13. CSA: C. 25, § 16. CRS 53: § 122-2-20. C.R.S. 1963: § 122-2-20. L. 84: Entire section amended, p. 378, § 4, effective May 11. L. 91: Entire section amended, p. 666, § 6, effective May 31. L. 2003: Entire section amended, p. 1208, § 12, effective July 1. L. 2004: Entire section repealed, p. 137, § 17, effective July 1.

**11-41-121. Merger, consolidation, and transfer.** (1) As used in this section, the word "association" shall include federal savings and loan associations incorporated under the "Home Owners' Loan Act of 1933".

(1.5) (a) A domestic association may merge with a foreign association and, subject to the limitations specified in this subsection (1.5), notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the association proposing to merge with a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:

(I) The foreign association seeking the merger shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and

(II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:

(A) and (B) (Deleted by amendment, L. 2004, p. 149, § 56, effective July 1, 2004.)

(C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements established by the federal deposit insurance corporation or its successor, whichever is greater; and



(II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and

(III) The commissioner shall not approve any proposed merger under the provisions of this subsection (1.5) if the merger would result in the foreign association controlling at the time of the merger more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (1.5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and

(IV) Except as otherwise provided in paragraph (b) of this subsection (1.5), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subparagraph (IV), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.

(b) On or after January 1, 1991, a foreign association seeking to merge with a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (1.5).

(c) Whenever a foreign association which meets the criteria established by this subsection (1.5) proposes to merge with a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner may require, and such application shall be accompanied by a nonrefundable filing fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application for merger, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met and that the merger is not contrary to the public interest.

(d) No foreign association may merge with a domestic association except in accordance with the provisions of this section, and no such merger may be completed without the approval of the commissioner.

(e) Any officer of a foreign association that merges with a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.

(f) Nothing in this section shall be construed to limit or otherwise curtail the powers of the commissioner with respect to supervisory mergers as established in section 11-44-110.5.

(2) Any two or more associations are authorized to merge and become incorporated in one body by transfer of all their assets and obligations upon such terms as set forth in an agreement of merger. The respective boards of directors of such associations, by a majority vote of each board, shall make or authorize to be made between such associations an agreement of merger.

(3) Copies of the proposed agreement of merger, signed by the president or vice-president of such association and verified by his affidavit and attested by the secretary or assistant secretary thereof with the seal of the association thereunto affixed, shall be submitted together with a fee in the amount established by the commissioner to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said copies of the proposed agreement, one copy to be filed in the division and one returned to each of the associations.

(4) If approved by the commissioner, such approved agreement shall be presented to the members of each of the merging associations at special meetings called for the purpose of considering and voting upon such approved agreement; but, in the case of associations having permanent stock, only the holders of the permanent stock shall be entitled to any

notice other than the published notice of such special meeting or to vote upon the agreement of merger. The complete agreement of merger, as adopted by the boards of directors and approved by the commissioner, shall be furnished each member entitled to vote on such merger at the time notice of such meetings, as required by section 11-41-123, is given. If at such meetings two-thirds of all votes of the members present in person or by proxy and entitled to vote on such merger are in favor of such approved agreement, the associations may proceed to merge in accordance therewith. The proceedings of such meetings shall be submitted to the commissioner for his approval in the same manner as required for the submission of the agreement by the boards of directors. Unless the agreement of merger fixes a later effective date thereof, the effective date of merger shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved agreement of merger.

(5) In the event any association involved in a proposed merger is a federal savings and loan association, the commissioner shall transmit to the federal office of thrift supervision or its successor, a copy of the proposed agreement of merger and shall not approve the agreement of merger unless and until he or she has been advised in writing by the federal office of thrift supervision or its successor that said office has no objection to the agreement.

(6) No such transfer shall prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct, and the reorganized association shall be liable for all obligations to members of the associations existing prior to such consolidation.

(7) Upon the effective date of the merger, all of the assets and property of every kind and character, real, personal, and mixed and tangible and intangible, choses in action, rights and credits then owned by the merging associations or which inure to any of them, immediately by operation of law, and without any conveyance or transfer, and without any further act or deed, shall be vested in and become the property of the association into which the other associations are absorbed, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by the merging associations prior to such merger. Such association shall be a continuation of the entity and identity of the association into which the other associations are absorbed, and all of the rights and obligations of the merging associations shall remain unimpaired, and the association, at the time of the taking effect of such merger, shall succeed to all of the rights and obligations and duties and liabilities of the merging associations. All rights and remedies of creditors and all liens upon the property of the merging associations shall be preserved, and all debts, liabilities, and duties of the respective merging associations shall thenceforth attach to the association and may be enforced against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it.

(8) All pending actions or other judicial proceedings to which any of the associations is a party shall not be deemed to have abated or to have discontinued by reason of such merger but may be pressed to final judgment, order, or decree in the same manner as if a merger had not been made; or the association resulting from such merger may be substituted as a party to such action or proceedings, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against any of the merging associations theretofore involved in such action or other judicial proceedings.

**Source:** L. 33: p. 306, § 12. CSA: C. 25, § 15. L. 39: p. 256, § 33. CRS 53: § 122-2-21. C.R.S. 1963: § 122-2-21. L. 69: p. 1016, § 9. L. 84: (3) amended, p. 378, § 5, effective May 11. L. 88: (1.5) added, p. 458, § 3, effective July 1. L. 2004: (1.5)(a)(I), (1.5)(a)(II)(A) to (1.5)(a)(II)(C), and (5) amended, pp. 149, 138, §§ 56, 18, effective July 1. L. 2005: IP(1.5)(a) amended, p. 763, § 17, effective June 1.

**Editor's note:** In 2000, subsection (1.5)(a)(II)(D), enacted in 1988, was renumbered as subsection (1.5)(a)(II.5) on revision.

**Cross references:** For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.



**11-41-122. Membership fees.** (1) Savings and loan associations shall not, directly or indirectly, charge any membership, admission, repurchase, withdrawal, or other fee, fine, penalty, or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association or for any other cause, except as provided in subsection (2) of this section; except that reasonable charges may be made to reflect the cost of servicing accounts and upon the making, transfer, or assumption of a loan and for defaults and prepayments of a loan and, after July 1, 1977, for the establishment and maintenance of any Keogh or individual retirement account. Reasonable notice of the amount of and conditions relating to such charges shall be given to affected members.

(2) Subject to such additional limitations, conditions, and provisions as may be promulgated in regulations of the commissioner, a savings and loan association required under a subpoena issued in a civil action to prepare disclosures of private records shall be reimbursed by the requesting party for such services as follows:

(a) For reproduction costs, including copies produced by printer or reproduction processes, the amount provided in section 13-32-104 (1), C.R.S. Costs of photographs, films, and other materials required shall be reimbursed at actual costs.

(b) For travel expenses incurred as a result of compliance, the amount provided in section 13-33-103 (1), C.R.S.;

(c) For personnel costs incurred as a result of compliance, the amount of two dollars and fifty cents for each quarter hour, or fraction thereof.

**Source:** L. 33: p. 354, § 8. CSA: C. 25, § 76. L. 39: p. 252, § 26. CRS 53: § 122-2-22. L. 59: p. 659, § 1. C.R.S. 1963: § 122-2-22. L. 77: Entire section amended, p. 572, § 1, effective June 4. L. 79: Entire section amended, p. 431, § 7, effective June 19. L. 83: Entire section amended, p. 494, § 3, effective July 1. L. 87: Entire section amended, p. 468, § 1, effective May 1. L. 2008: (2)(a) amended, p. 1881, § 15, effective August 5.

**11-41-123. Directors and meetings.** (1) The corporate powers shall be exercised by a board of directors, which may be any number not less than five as shall be fixed by and stated in the articles of incorporation and which directors shall hold office until their successors are duly elected and qualified. At each annual meeting, the successors to the directors whose terms of office then expire shall be elected by the members entitled to vote at such time and place as shall be directed by the articles or bylaws of the association.

(2) Public notice of the time and place of holding such elections, and also of all special meetings of the members, shall be published at least once, not more than thirty days nor less than ten days prior to the date fixed for said meeting, in a newspaper of general circulation printed in the county where the principal office of said corporation is located, and, if there is no such newspaper, then in a newspaper printed in an adjoining county, and, with respect to any special meeting or any annual meeting to be held at a time or place other than as specified in the articles of incorporation or bylaws of the association, by delivering personally to each member or depositing in the post office at least thirty days before such meeting a copy of said notice, addressed to each member entitled to vote thereat, with the signature of the president or secretary printed thereon, stating the time and, in case of special meetings, the objects of said meeting; and no business shall be transacted at any special meeting except such as shall be mentioned in said notice; if any member fails to furnish the secretary with his correct post-office address, he shall not be entitled to separate notice.

(3) Whenever any notice is required to be given under the provisions of articles 40 to 46 of this title or under the provisions of the articles or bylaws of any association organized under the laws of Colorado, a waiver thereof in writing signed by the persons entitled to said notice, whether before, at, or after the time stated therein, shall be deemed equivalent to such notice.

(4) Members who are entitled to vote may vote either in person or by proxy at such meetings. Any number of members present in person or by proxy at a regular or special meeting of the members shall constitute a quorum unless otherwise specifically provided in articles 40 to 46 of this title. If a majority of the votes represented at any annual or special

meeting are in favor of adjournment, such meeting may be adjourned for a period not to exceed sixty days at one adjournment. Each member entitled to vote shall be permitted to cast, in person or by proxy, one vote for each one hundred dollars, or fraction thereof, of the total certificate value of all his shares and stock. A borrowing member holding a membership certificate shall be permitted, as a borrower, to cast one vote and has such voting right in all cases where articles 40 to 46 of this title give such right to shareholders.

(5) A majority of all votes cast at any meeting of members shall determine any question unless otherwise specifically provided. The members who are entitled to vote at any meeting of the members shall be those of record on the books of the association at the end of the calendar month next preceding the date of the meeting of members, except those who have ceased to be members. In balloting for directors, members may vote for as many directors as are to be elected, or, in case the certificate of incorporation of the association permits cumulative voting, each member may cumulate his votes and give one candidate as many votes as the number of directors multiplied by the number of his votes or distribute them on the same principle among as many candidates as he may desire; and the person having the highest number of votes in consecutive order shall be declared elected. By the unanimous vote of all the members represented at such meeting, the secretary of the meeting may be authorized and instructed to cast one ballot for one or more of all the directors to be elected.

(6) When any vacancy occurs among the directors by death, resignation, or otherwise, it shall be filled for the remainder of the year by a majority vote of the remaining directors, unless otherwise provided by the bylaws of said association.

**Source:** L. 33: p. 307, § 14. CSA: C. 25, § 17. L. 39: p. 243, § 17. CRS 53: § 122-2-23. C.R.S. 1963: § 122-2-23. L. 69: p. 1016, § 10. L. 84: (1) amended, p. 379, § 6, effective May 11.

#### ANNOTATION

**Courts generally will not interfere with management.** In the absence of fraud, gross mismanagement, or ultra vires acts by those lawfully entrusted with the management of the corporation, under this section, neither a court of law nor equity has jurisdiction to interfere with or control the internal affairs or policy of the

corporation. The rule applies to the setting aside of reserve funds and the declaration of dividends, and courts will not interfere with the discretion of directors in such matters unless they have acted fraudulently, capriciously, or unreasonably. *Midland Sav. & Loan Co. v. Dunmire*, 68 F.2d 249 (10th Cir. 1933).

**11-41-124. Officers or directors to receive no commission.** No officer or director of any savings and loan association shall take or receive for himself, directly or indirectly, any commission, compensation, remuneration, gift, speculative interest, or other thing of value as an inducement to the making of any loan by the association or the purchase of any securities for the association or for the sale of any of the stock of the association.

**Source:** L. 33: p. 354, § 6. CSA: C. 25, § 74. CRS 53: § 122-2-24. C.R.S. 1963: § 122-2-24.

**11-41-125. Loans to officers and directors.** No officer or director of any savings and loan association shall negotiate for or receive a mortgage loan from such association, except for the bona fide financing of the home of such officer or director, unless the commissioner has first approved such loan.

**Source:** L. 33: p. 358, § 16. CSA: C. 25, § 84. CRS 53: § 122-2-25. L. 55: p. 761, § 4. C.R.S. 1963: § 122-2-25.

**11-41-126. Bonds of officers.** Every officer, employee, and agent handling or having custody or charge of funds or securities belonging to a savings and loan association, before entering upon the discharge of his duties, shall give a good and sufficient bond in such sum



as may be fixed by the board of directors of any such association. Such bond shall be in such form and provide such coverage as the commissioner may direct and shall be made by a surety corporation authorized to do business in this state. The amount of such bond as to each person shall be subject to the approval of the commissioner. In lieu of individual bonds, a blanket bond covering all active officers, agents, and employees of such association may be executed, subject to approval by the commissioner. Every such bond shall be in force until ten days after notice to such commissioner that the same is to be cancelled.

**Source:** L. 33: p. 362, § 22. CSA: C. 25, § 90. L. 39: p. 255, § 31. CRS 53: § 122-2-26. C.R.S. 1963: § 122-2-26.

**11-41-127. Violations - penalties.** (1) Any officer, director, agent, or employee of any savings and loan association who, directly or indirectly or by indirection, commits or causes the commission of theft, abstraction, or misapplication of any of the funds or securities or other property of or under the control of any savings and loan association, with intent to deceive, injure, cheat, wrong, or defraud any person, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully and knowingly violates section 11-41-103 and sections 11-41-124 to 11-41-126 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment, and each such violation shall constitute a separate offense.

**Source:** L. 33: p. 362, § 23. CSA: C. 25, § 91. L. 39: p. 256, § 32. CRS 53: § 122-2-27. C.R.S. 1963: § 122-2-27. L. 77: (1) amended, p. 871, § 26, effective July 1, 1979. L. 89: (1) amended, p. 822, § 13, effective July 1. L. 2002: (1) amended, p. 1471, § 39, effective October 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

#### ANNOTATION

**Law reviews.** For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

**11-41-128. Acknowledgments.** No notary public or other public officer qualified to take acknowledgments or proof of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a savings and loan association is interested by reason of his employment by or his being a member or officer of the savings and loan association interested in such instrument.

**Source:** L. 33: p. 353, § 5. CSA: C. 25, § 73. L. 51: p. 216, § 4. CRS 53: § 122-2-28. C.R.S. 1963: § 122-2-28.

**11-41-129. Amendment of articles of incorporation.** (1) Except as provided in section 11-41-130.5, if the holders of at least one-third of the outstanding voting stock or shares of any association request, in writing, the president or other head officer thereof to call a meeting of stockholders or shareholders of such association for the purpose of considering a proposed amendment to the articles of incorporation of such association, setting forth in such written request the substance of each proposed amendment, or if the

board of directors of any association votes to submit to the stockholders or shareholders thereof a proposed amendment to the articles of incorporation of such association, the president or secretary of the association forthwith shall call a special meeting of the voting stockholders or shareholders of such association for the purpose of considering said proposed amendment for a time not less than thirty nor more than sixty days thereafter. In the event that the request for a meeting of stockholders or shareholders to consider a proposed amendment of the articles of incorporation is presented within ninety days prior to the date of the next annual meeting of the stockholders or shareholders of the association or in the event that the amendment is proposed by the board of directors of the association, the board of directors may cause such proposed amendment to be submitted for consideration at such next annual meeting, or at an adjourned session thereof, rather than at a special meeting of stockholders or shareholders called for such purpose.

(2) If at any such meeting the proposed amendment to the articles of incorporation of such association receives the affirmative vote of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, or such greater amount as may be required by the articles of incorporation, or any amendment thereto, of the stock or shares of each class outstanding having voting power, such amendment shall be deemed adopted; but, where necessary for any association to increase its authorized permanent stock to conform to the requirements of said section 11-42-107, the affirmative vote of a majority of such stock or shares shall be required.

(3) If any proposed amendment to the articles of incorporation would alter or change the preference given to any one or more classes of shares or stock or would convert the stock into shares or shares into stock, the holders of each class of stock or shares so affected by said amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the articles of incorporation such class is entitled to vote or not, and the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of the amount of each class of stock or shares outstanding so affected by the amendment shall be necessary to the adoption thereof, as well as the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of all classes of stock or shares outstanding having voting power.

(4) A certificate setting forth such amendment and the adoption thereof, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted together with the fee established by the commissioner to the commissioner for his approval or disapproval, and, if he approves, he shall cause a certificate of approval to be attached to said proposed amendment, and then the same shall be filed in the same manner as articles of incorporation, and thereafter said amendment shall be in full force and effect to the same extent, except as provided in section 11-41-130.5, as if the same had been included in the original articles of incorporation. No amendment to the articles of incorporation shall be filed in the office of the secretary of state of the state of Colorado or received by the secretary of state unless a certificate of approval by the commissioner is attached thereto.

(5) Except as provided in section 11-41-130.5, any association organized under the laws of this state, from time to time, may amend its articles of incorporation by increasing or decreasing its authorized stock or shares or reclassifying the same, or by changing the number, designation, preference, relation, or participating or other special rights of shares or stock or the qualifications, limitations, or restrictions of such rights, or by changing its corporate title, or by making any other change or alteration in its articles of incorporation that may be desired, if such articles of incorporation, as so amended, contain only such provisions as it would be lawful and proper to insert in original articles of incorporation made at the time of making such amendment. Except as provided in section 11-41-130.5, no association by any amendment shall so change its articles of incorporation as to work a change in the objects or purposes for which the association was originally organized.

**Source:** L. 33: p. 310, § 15. C.S.A: C. 25, § 18. CRS 53: § 122-2-29. C.R.S. 1963: § 122-2-29. L. 65: p. 971, § 1. L. 69: p. 1017, § 11. L. 84: (1), (4), and (5) amended, p. 379, § 7, effective May 11.



**11-41-130. Reorganization.** (1) The board of directors of any association, at a meeting called for that purpose, may adopt a plan of reorganization of the association. Two copies of the proposed plan of reorganization, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said proposed plan, one copy to be filed in the division and one returned to the association. If approved by the commissioner, such approved plan shall be presented to the members at a special meeting called for the purpose of considering and voting upon such approved plan. The complete plan of reorganization, as adopted by the board of directors and approved by the commissioner, shall be furnished each member at the time notice of such meeting, as required by section 11-41-123, is given. If at such meeting two-thirds of all votes of the members present in person or by proxy are in favor of such approved plan, the association may proceed to reorganize in accordance therewith.

(2) The proceedings of such meeting shall be submitted to the commissioner for his approval in the same manner as required for the submission of the plan by the board of directors. Unless the plan of reorganization fixes a later effective date thereof, the effective date of reorganization shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved plan of reorganization.

(3) The privilege of reorganization is likewise extended to savings and loan associations which are in the course of voluntary or involuntary liquidation.

(4) In order that equity may be done for all members of such association in the event of reorganization, all pending withdrawal applications shall be cancelled.

(5) In addition to all other lawful provisions, the plan may provide for the exchange of shares or stock or both in the association for shares or stock or both of the same or a different class of the reorganized association. Without limiting the methods by which an association may reorganize, any association may:

(a) Provide for reorganization under the existing name of the association or under a different name;

(b) Provide for segregation by division, on the records of the association or on the records of any reorganized association, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both, and of any reserves created to absorb losses;

(c) Provide for segregation by division, between the association and a reorganized association or between two reorganized associations, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both and of any reserves created to absorb losses;

(d) Fix the time prior to which notice of withdrawal of such shares so issued in exchange for shares in the associations being reorganized shall not be given.

(6) The reorganization of such association shall not prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct. All obligations to any such prior association shall inure to the benefit of the reorganized association and shall be enforceable by it and in its name, and demands, claims, and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced theretofore; and all deeds, notes, mortgages, contracts, judgments, transactions, and proceedings whatsoever theretofore made, received, entered into, carried on, or done by such association before such reorganization shall be as good, valid, and effectual in law as though such association had never been reorganized.

**Source:** L. 33: p. 365, § 28. CSA: C. 25, § 96. L. 39: p. 258, § 34. CRS 53: § 122-2-30. C.R.S. 1963: § 122-2-30.

**11-41-130.5. Cessation of business as an association - amendment of articles.**

(1) Notwithstanding any provision of this article to the contrary, in connection with the

sale of all or a substantial part of its assets, the board of directors of any savings and loan association may propose an amendment to its articles of incorporation to amend the objects and purposes to conform to those authorized in the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and to make such other amendments authorized by and not inconsistent with the provisions of article 110 of title 7, C.R.S. Such proposed amendments shall be submitted to the members or, if the savings and loan association has permanent stock, to the stockholders of said association for their approval. Upon approval, said amendments shall be submitted to the commissioner, together with a plan pursuant to subsection (2) of this section, for his approval.

(2) The amendments to a savings and loan association's articles of incorporation shall be accompanied by a plan for the cessation of the conduct of a savings and loan association in the state.

(3) (a) The commissioner shall approve a plan only if:

(I) He determines that an association has paid or has made provision through an assumption agreement or otherwise for its known and unclaimed liabilities to its depositors and account holders;

(II) The amended articles of incorporation delete the words "savings and loan association"; and

(III) The amended articles of incorporation expressly prohibit the conduct of a savings and loan or banking business in Colorado by the corporation.

(b) In approving a plan, the commissioner may impose such terms and conditions as he deems necessary to protect the depositors, account holders, stockholders, members, and creditors of the savings and loan association.

(4) Upon approval of a plan and the amendments to the articles of incorporation by the commissioner pursuant to this article and upon the filing of such amendments, along with the applicable filing fees with the secretary of state as provided by section 11-41-129 (4), a corporation shall continue in existence pursuant to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., but said corporation shall cease to be a savings and loan association or an association. The corporation's certificate of authority as a savings and loan association or an association shall automatically be cancelled, without further action, and the corporation shall be deemed to be organized pursuant to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and shall cease to be subject to the provisions of the "Savings and Loan Association Law", articles 40 to 46 of this title.

**Source: L. 84:** Entire section added, p. 380, § 8, effective May 11. **L. 93:** (1) and (4) amended, p. 861, § 29, effective July 1, 1994.

**11-41-131. Dissolution.** (1) Any domestic association may elect to abandon its certificate of authority, liquidate its affairs, and dissolve as provided in this section. The affirmative vote of at least a majority of the directors must be cast in favor of such proposal at a special meeting thereof. A certified copy of such action shall be furnished to the commissioner, who shall forthwith examine said association, and, if he determines that such association is solvent and that it is to the best interests of the members that such liquidation be accomplished in the manner provided in this section, he shall certify his approval thereto. Upon the granting of such approval, a special meeting of all members entitled to vote shall be called in the manner provided by section 11-41-123. If a majority vote of all such members of the association is cast in favor of the proposal to liquidate and ultimately dissolve such association under the provisions of this section, such proposal shall be deemed adopted. A certified copy of all proceedings taken prior to and at such meeting shall be filed with the commissioner, who shall determine whether or not such proceedings have been conducted in accordance with law. If the commissioner finds that such proceedings are legal and proper, he shall certify his approval thereon and authorize said association to proceed with the liquidation in the manner provided in this section.

(2) The board of directors shall act as trustees for liquidation, and shall proceed as speedily as may be practical to wind up the affairs of the association, and, to the extent necessary, shall exercise all the powers granted by articles 40 to 46 of this title to active



associations and to the commissioner in the case of departmental liquidation, and, without prejudice to the generality of such authority, may carry out executory contracts, enter into new contracts, borrow money, mortgage or pledge property, sell assets at public or private sale, make and receive conveyances in the corporate name, lease real estate, settle or compromise claims, commence and prosecute all actions and proceedings necessary to enable liquidation, distribute assets either in cash or in kind among members according to their respective rights, after paying or adequately providing for the payment of liabilities, and do and perform all acts necessary or expedient to the winding up of the association. The board of directors has power to exchange or otherwise dispose of or place in trust all or any part of the assets upon such terms and conditions and for such considerations as may be deemed reasonable or expedient and may distribute such considerations among the members in proportion to their interest therein. In the absence of fraud, any determination of value made by said board of directors for any such purpose shall be conclusive.

(3) The association, during the liquidation of the assets of the association, shall be subject to the supervision of the commissioner, and shall pay such fees and assessments as are provided for in articles 40 to 46 of this title in the case of active associations and shall report the progress of such liquidation to the commissioner as he may require. Upon completion of liquidation, a final report and accounting of the affairs of the association shall be made to the commissioner. Upon the approval of such report by the commissioner, the board of directors, without the necessity of further action by the members of the association, shall proceed to dissolve such association in the manner provided by law in the case of general corporations.

(4) Nothing in this section shall prejudice the rights of the commissioner to take possession of any association, under the authority vested in him by the provisions of section 11-44-110, upon determining that such procedure is to the best interest of the members.

**Source:** L. 39: p. 260, § 35. CSA: C. 25, § 98. CRS 53: § 122-2-31. C.R.S. 1963: § 122-2-31.

**11-41-132. Escheat proceedings.** (1) If the affairs of an association have been voluntarily liquidated as provided in articles 40 to 46 of this title and any liquidating dividends remain unclaimed after the approval of the final report of liquidation, the trustees for liquidation may transfer such unclaimed liquidating dividends to the commissioner. In case of such transfer or in case an association has been liquidated by the commissioner and any liquidating dividends remain unclaimed six years after the approval of the final report of such liquidation, the commissioner may elect to pay such unclaimed liquidating dividends to the state treasurer.

(2) Due notice of such election shall be given by publication once a week for four successive weeks in some newspaper of general circulation in the county in this state where the last principal place of business of such association was located. Within fifteen days after the first publication, the commissioner shall mail a copy of the notice to each person whose liquidating dividends are to be paid to the state treasurer at the last address appearing on the books of the association.

(3) After thirty days from the date of the last publication, the commissioner shall pay to the state treasurer any such liquidating dividends in his possession, less the costs of publication and mailing, and shall file with the state treasurer the affidavit of publication by the publisher and the affidavit of mailing by the commissioner, showing the dates of such publications and mailing. The state shall be answerable for such funds, without interest, anytime within twenty-one years after the same have been paid into the treasury, to such persons as shall be legally entitled thereto. After the lapse of twenty-one years from the time any such moneys have been paid into the state treasury, no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state and shall be transferred to the general fund.

(4) Payment to the state treasurer shall discharge the commissioner from any further liability or responsibility for such moneys.

**Source:** L. 51: p. 216, § 5. CSA: C. 25, § 99. CRS 53: § 122-2-32. C.R.S. 1963: § 122-2-32.

**11-41-133. Acquisition of majority control over an existing association - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Entity" means a person or group of persons.  
(b) "Person" means an individual, corporation, partnership, trust, or similar organization.

(c) An entity shall be deemed "to have control" of an association if said entity:  
(I) Directly or indirectly, or acting in concert with one or more persons, owns, controls, holds with the power to vote, or holds proxies representing more than twenty-five percent of the permanent stock of such association;  
(II) Controls in any manner the election of a majority of the directors of such association; or  
(III) Exercises a controlling influence over the management or policies of such association.

(2) (a) Whenever an entity proposes to take an action or conduct an activity which would cause such entity to have control of that association, the entity shall first make application to the commissioner for a certificate of approval of such action or activity.

(b) The application shall be in such form and provide such information as the commissioner may require by rule or regulation and shall be accompanied when submitted by a nonrefundable filing fee in the amount established by the commissioner.

(3) After receipt of an application, the commissioner shall make an investigation and shall issue the certificate of approval only after he has determined:

(a) That the controlling entity is qualified by character, experience, and financial responsibility to control the association in a legal and proper manner; and

(b) That the interests of the public generally will not be jeopardized by the proposed action or activity causing the entity to have control of the association.

(4) This section shall not apply to the acquisition of:

(a) Directors' voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting a debt contracted in good faith; except that it shall apply two years after the date of acquisition; or

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof.

(5) When the commissioner has not acted upon a completed application within sixty days of receipt thereof, it shall be considered approved.

(6) (a) A domestic association may, subject to any applicable regulations of the federal deposit insurance corporation or its successor, invest in an association that is domiciled or conducts its principal operations in another state and acquire control of such association, and notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the entity proposing to acquire control of a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:

(I) The foreign association seeking the acquisition shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and

(II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:

(A) and (B) (Deleted by amendment, L. 2004, p. 150, § 57, effective July 1, 2004.)

(C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements established by the federal deposit insurance corporation or its successor, whichever is greater; and

(II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this



section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and

(III) The commissioner shall not approve any application for acquisition under this subsection (6) if such acquisition would result in the foreign association controlling at the time of the acquisition more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (6), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and

(IV) Except as provided in paragraph (b) of this subsection (6), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subsection (6), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.

(b) On or after January 1, 1991, a foreign association seeking to acquire control of a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (6).

(c) Whenever a foreign association which meets the criteria established by this subsection (6) proposes to acquire control of a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner shall require, and such application shall be accompanied by a nonrefundable filing fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application to acquire control of a domestic association, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met and that the acquisition is not contrary to the public interest.

(d) No foreign association may acquire control of a domestic association except in accordance with the provisions of this section, and no such acquisition shall be completed without a certificate of approval issued by the commissioner.

(e) A domestic association which is acquired in accordance with the provisions of this section may continue to operate as a domestic association subject to the provisions of articles 40 to 46 of this title. Any officer of a foreign association that acquires a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.

**Source:** **L. 83:** Entire section added, p. 489, § 2, effective April 26. **L. 84:** (2)(b) amended, p. 381, § 9, effective May 11. **L. 88:** (6) added, p. 459, § 4, effective July 1. **L. 89:** (2)(a), (3)(a), and (3)(b) amended, p. 611, § 5, effective April 19. **L. 2004:** IP(6)(a), (6)(a)(I), and (6)(a)(II)(A) to (6)(a)(II)(C) amended, p. 150, § 57, effective July 1.

**Editor's note:** In 2000, subsection (6)(a)(II)(D), enacted in 1988, was renumbered as subsection (6)(a)(II.5) on revision.

**11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration.** (1) The savings and loan association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors and officers shall have the

benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

(2) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in articles 40 to 46 of this title:

(I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, which provides insurance coverage to directors or officers, or both, of a savings and loan association but which does not grant coverage or which excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such savings and loan association, whether in its own name or in behalf of any other person or entity; or

(II) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of the savings and loan association by a receiver or other liquidator or by state or federal officials.

(b) No provision of articles 40 to 46 of this title shall be construed to contravene or modify the expressed public policy set forth in this subsection (2).

**Source:** L. 87: Entire section added, p. 371, § 16, effective May 20. L. 93: Entire section amended, p. 620, § 4, effective April 30; (1) amended, p. 862, § 30, effective July 1, 1994.

**Editor's note:** Amendments to this section by House Bill 93-1154 and House Bill 93-1261 were harmonized.

## ARTICLE 42

### Shares and Stock

11-42-101.	Investment and savings shares.	11-42-113.	Redemption of shares or stock.
11-42-102.	Preliminary requirements.	11-42-114.	Bonus plan.
11-42-103.	Contents of certificate - accounts.	11-42-115.	Power to issue shares to minors or in trust.
11-42-104.	Participating and limited dividend shares.	11-42-116.	Joint accounts.
11-42-105.	Responsibility for losses - extent.	11-42-117.	Notice of intention to withdraw.
11-42-106.	Transfer of shares.	11-42-118.	Form of notice.
11-42-107.	Permanent stock.	11-42-119.	Filing of notice.
11-42-108.	Assessment to restore impaired permanent stock.	11-42-120.	Shares or account not withdrawable.
11-42-109.	Sale of delinquent stock.	11-42-121.	Payment of withdrawals.
11-42-110.	Forfeiture of delinquent stock.	11-42-122.	Limitation on withdrawals.
11-42-111.	Reserves and distribution of earnings.	11-42-123.	Matured shares.
11-42-112.	Requirements for sale of permanent stock.	11-42-124.	Applicable to previously issued certificates.
		11-42-125.	Associations authorized to accept deposit accounts.

**11-42-101. Investment and savings shares.** (1) Every association may issue and sell an unlimited number of shares of the following types, as described in this section:

(a) "Investment shares" are shares on which the full payment has been made and on which dividends shall be paid in cash.

(b) "Savings shares" are shares on which an initial payment has been made, and upon which further payments are to be made at such times and in such amounts as are optional



with the member, and on which dividends shall be credited unless otherwise agreed that all or part shall be paid in cash.

(c) "Short-term savings shares" are shares which are to be withdrawn in less than twenty-four months from the date on which such share account is opened, or a share account established for the purpose of accumulating funds to pay taxes or insurance premiums, or both, in connection with a loan on the security of a lien on real estate. No association shall be required to distribute earnings on short-term savings shares.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-1. L. 55: p. 761, § 5. L. 59: p. 659, § 2. C.R.S. 1963: § 122-3-1.

#### ANNOTATION

**A certificate of deposit payable to the order of depositor on demand makes depositor a creditor** of a savings and loan association, not a

member. Dollar Bldg. & Loan Ass'n v. Shields, 93 Colo. 480, 27 P.2d 485 (1933).

**11-42-102. Preliminary requirements.** Shares may be purchased and held absolutely by or in trust for any person, partnership, association, corporation, or trustee. Certificates shall be issued to each purchaser of shares at the time of making full or initial payment thereon, and at the same time share account books shall be issued to purchasers of savings shares.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-2. L. 55: p. 761, § 6. C.R.S. 1963: § 122-3-2.

**11-42-103. Contents of certificate - accounts.** A share account shall be kept on the books of the association with each certificate holder showing the aggregate of all payments made, plus dividends paid in cash or credited. The aggregate of all payments made, plus dividends credited, less withdrawals, shall be termed the "certificate value" or "withdrawal value" of the account.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-3. L. 55: p. 762, § 7. C.R.S. 1963: § 122-3-3.

#### ANNOTATION

**A mutual association cannot contract as to maturity date of its stock.** A mutual building and loan association has no power to contract

with a shareholder that his stock will mature in a definite time. People's Bldg. & Loan Ass'n v. Purdy, 20 Colo. App. 287, 78 P. 465 (1904).

**11-42-104. Participating and limited dividend shares.** Shares may be issued to participate fully or to a limited extent in the net earnings of the association if the articles of incorporation so provide, and such participation shall be specified in the body of the certificate. All shares participating fully in net earnings shall be entitled to an equal rate of dividend, if earned, as fixed by the board of directors. Shares participating to a limited extent shall be entitled to such rate of dividend, if earned, as fixed by the board of directors for the semiannual periods ending June thirtieth and December thirty-first of each year; but, if the rate is decreased, the shareholders thus affected shall be given written notice of the new rate, within thirty days after date of declaration, by mailing such notice to their last known addresses.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-4. L. 55: p. 762, § 8. C.R.S. 1963: § 122-3-4.

## ANNOTATION

**Directors must act reasonably and honestly in declaring dividends.** A holder of a certificate is entitled only to the face value of the certificate plus the regular dividend and such extra divi-

dends as the directors, acting honestly and reasonably and not fraudulently or capriciously, declare. *Midland Sav. & Loan Co. v. Dunmire*, 68 F.2d 249 (10th Cir. 1933).

**11-42-105. Responsibility for losses - extent.** The members of an association shall not be responsible for any losses which its invested capital is not sufficient to satisfy, except to the extent provided in sections 11-42-108 to 11-42-110, and the shares shall not be subject to assessment, nor shall certificate holders be liable for any unpaid installment on their shares. Except as provided in article 47 of this title, no preference between certificate holders shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. Shareholders in mutual associations shall participate in the distribution of all assets, and in permanent stock associations they shall participate first, but only to the extent of their share investments.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-5. C.R.S. 1963: § 122-3-5. L. 75: Entire section amended, p. 406, § 2, effective January 1, 1976.

**11-42-106. Transfer of shares.** Share certificates are transferable on the books of the association by the holder thereof, in person or by a duly authorized attorney, upon surrender of the certificate properly endorsed. The association may treat the holder of record thereof as the owner for all purposes without being affected by any notice to the contrary until the certificate is transferred on the books of the association. A transfer charge of not to exceed fifty cents may be charged for each certificate transferred on its books.

**Source:** L. 33: pp. 312-317, §§ 1-6. CSA: C. 25, § 19. L. 39: p. 248, § 19. L. 43: p. 202, § 4. CRS 53: § 122-3-6. L. 55: p. 762, § 9. C.R.S. 1963: § 122-3-6.

**11-42-107. Permanent stock.** (1) Permanent stock shall be of one class only, shall have the full voting rights, and shall have a par value of not less than one dollar per share; and the proceeds thereof, to the extent of such par value, shall be set apart, shall be nonwithdrawable, and shall be a reserve to absorb losses after all surplus, undivided profits, and other reserves available for losses have been depleted.

(2) Any paid-in surplus may be made available for payment of organization and initial operating expenses, or may be credited to surplus, or to the contingent reserve, or to the federal insurance reserve, or may be transferred to permanent stock as a stock dividend and prorated to the holders of permanent stock. An association shall not issue permanent stock for a consideration other than cash or for a price less than the par value thereof, but, with the approval of the commissioner, stock may be issued for a consideration other than cash in connection with mergers, consolidations, or transfers, and, when fully paid, the stock shall be kept unimpaired to the extent of its par value.

(3) An association may declare and distribute stock dividends from net earnings, or surplus, or undivided profits. With the prior consent of the commissioner, the stock of an association may be reduced by resolution of the board of directors approved by vote or written consent of the holders of a majority of the outstanding stock of such association to such amount as the commissioner shall approve, and any such reduction shall be credited to the contingent reserve account and shall not be available for dividends to stockholders or shareholders; but any reduction in the amount of permanent stock is subject to the provisions of this section and section 11-41-105 fixing minimum permanent stock requirements.

(4) Except as may be required by the commissioner pursuant to section 11-41-105, no association shall be required to maintain permanent stock in excess of five hundred thousand dollars; however, the total amount of permanent stock subscribed to and paid for



shall not at any time, until the maximum of five hundred thousand dollars has been reached, be less than at least the following percentages of the aggregate certificate value of the outstanding invested capital (excluding permanent stock) standing on the records of the association as of January 1 of the current year: Three percent on five million dollars; two percent on five million one dollars through seven million five hundred thousand dollars; one percent on all over seven million five hundred thousand dollars.

(5) (a) As used in this subsection (5), the term "impaired" means a condition in which an association is unable to meet current obligations as they mature.

(b) Cash dividends may be declared and paid on permanent stock unless an association is in an impaired condition or the payment thereof would cause the association's assets to be impaired. Nothing in this subsection (5) shall affect subsection (1) of this section, section 11-42-111 (1) or (7), or other provisions of articles 40 to 47 of this title, restricting the payment of dividends on permanent stock. Subject to the provisions of articles 40 to 47 of this title, permanent stock shall be entitled to such rate of dividends, if earned, as fixed by the board of directors.

(c) Any association which intends to declare a cash dividend on permanent stock shall provide a minimum of thirty days' written notice of its intention to the commissioner.

(6) Directors' and stockholders' meetings shall be called, advertised, and held in accordance with section 11-41-123, but the holders of permanent stock shall have exclusive voting rights.

**Source:** L. 33: p. 317, § 1. CSA: C. 25, § 25. L. 43: p. 204, § 5. L. 51: p. 212, § 2. CRS 53: § 122-3-7. L. 55: p. 762, § 10. L. 59: p. 660, § 3. L. 61: p. 649, § 2. C.R.S. 1963: § 122-3-7. L. 83: (4) and (5) amended, p. 490, § 3, effective April 26. L. 85: (5)(c) added, p. 399, § 1, effective May 24. L. 2006: (4) amended, p. 1491, § 17, effective June 1.

**11-42-108. Assessment to restore impaired permanent stock.** (1) Stockholders, after their stock has been fully paid, are not liable to creditors or for assessments upon their stock issued on or after July 1, 1981, except as provided by this section. If the commissioner, as a result of any examination or from any report made to him, finds that the permanent stock of any association is impaired, he shall notify the association that such impairment exists. In the event the amount of the impairment, as determined by the commissioner, is questioned by the association, then, upon application filed within ten days, the value of the assets in question shall be determined by appraisals made by independent appraisers acceptable to the commissioner and the association.

(2) If the bylaws of an association expressly give the directors the authority to levy an assessment on permanent stock, then, subject to any limitations contained in the bylaws, the directors may levy and collect assessments upon permanent stock. The directors of an association which has received such notice may levy a pro rata assessment upon the permanent stock thereof to make good such impairment and shall cause notice of the finding of the commissioner and such levy to be given in writing to each stockholder of such association and the amount of assessment which the stockholder must pay for the purpose of making good such impairment; but, in lieu of making such assessment, the impairment may be made good, without the consent of the commissioner, by the reduction of the permanent stock in the manner provided in section 11-42-107.

**Source:** L. 33: p. 317, § 1. CSA: C. 25, § 25. L. 43: p. 204, § 5. L. 51: p. 212, § 2. CRS 53: § 122-3-8. C.R.S. 1963: § 122-3-8. L. 81: Entire section amended, p. 623, § 3, effective May 18.

#### ANNOTATION

**Compliance with this section is mandatory.** Upon notification that the capital of a savings and loan association is impaired, compliance with this statute is mandatory. Equity Sav. &

Loan Ass'n v. Great W. Mtgs., Inc., 31 Colo. App. 178, 501 P.2d 483 (1972).

**The directors have two alternatives:** They can question the amount of the impairment

within 10 days of notification, or they can forego questioning the impairment and levy a pro rata assessment. *Equity Sav. & Loan Ass'n v. Great*

*W. Mtgs., Inc.*, 31 Colo. App. 178, 501 P.2d 483 (1972).

**11-42-109. Sale of delinquent stock.** (1) If any stockholder refuses or neglects to pay the assessment specified in such notice within sixty days from the date of mailing, the directors of such association shall have the right to sell to the highest bidder at public auction any part or all of the stock necessary to pay the assessment of such stockholder, after giving a previous notice of such sale for ten days in a newspaper of general circulation published in the county where the principal office of such association in this state is located, and a copy of such notice of sale shall also be served on such stockholder by mailing a copy of the notice to his last known address ten days before the day fixed for such sale, or such stock may be sold at a private sale and without public notice; but, before making such private sale thereof, an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock to be sold by mailing a copy of such offer to his last known address, and, if, after service of such offer, such owner still refuses or neglects to pay such assessment within thirty days from the time of the service of such offer, the directors may accept the offer and sell such stock to the person making such offer or to any other person making a larger offer than the amount named in the offer submitted to the stockholder, but such stock in no event shall be sold for less than the amount of such assessment so called for and the expense of the sale.

(2) Out of the proceeds of the stock sold, the directors shall pay the amount of assessment levied thereon and the necessary cost of sale, and the balance, if any, shall be paid to the person whose stock has been sold. A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificate evidencing the stock sold and shall make the same null and void, and a new certificate shall be issued by the association to the purchaser thereof.

**Source:** L. 33: p. 317, § 1. CSA: C. 25, § 25. L. 43: p. 204, § 5. L. 51: p. 212, § 2. CRS 53: § 122-3-9. C.R.S. 1963: § 122-3-9.

#### ANNOTATION

**Shares may be sold of stockholder who refuses to pay assessment.** Where a stockholder refuses to pay an assessment properly levied under this statute, the corporation can sell some of that stockholder's shares in order to raise the amount of the assessment. *Equity Sav. & Loan Ass'n v. Great W. Mtgs., Inc.*, 31 Colo. App. 178, 501 P.2d 483 (1972).

**Issue of directors' negligence cannot be used as a defense to an assessment.** The fact, if it be a fact, that the board of directors was

negligent or acted improperly in causing the corporation to be in an impaired capital position did not constitute a basis for stopping the sale of stock of those stockholders who refused to pay the stock assessment, where the issue was not before the court, but rather is an issue which would be the basis of a separate independent action. *Equity Sav. & Loan Ass'n v. Great W. Mtgs., Inc.*, 31 Colo. App. 178, 501 P.2d 483 (1972).

**11-42-110. Forfeiture of delinquent stock.** (1) If no bid or offer is received equal to or more than the amount of such assessment and the expense of sale, such stock shall be declared forfeited to the association and accepted in full satisfaction of such assessment, and such stock shall not be reissued except in accordance with a permit thereafter obtained from the commissioner pursuant to section 11-42-112.

(2) The proceeds from any assessment, less the cost of any sales and any forfeiture of delinquent stock, shall be credited to the contingent reserve account.

**Source:** L. 33: p. 317, § 1. CSA: C. 25, § 25. L. 43: p. 204, § 5. L. 51: p. 212, § 2. CRS 53: § 122-3-10. C.R.S. 1963: § 122-3-10.

**11-42-111. Reserves and distribution of earnings.** (1) Every association shall maintain general reserves for the sole purpose of meeting losses. Such reserves shall include the



following: Permanent stock, federal insurance reserve, contingent reserve, state tax reserve, and any special purpose reserve established for the sole purpose of absorbing losses by action of the association's board of directors or at the request of the commissioner.

(2) Repealed.

(3) Every association shall set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "contingent reserve", by transfers from net earnings on the closing date fixed for such associations as provided in articles 40 to 46 of this title.

(4) Every association may set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "state tax reserve" in accordance with article 2 of title 29 and articles 20 to 28 of title 39, C.R.S., by annual transfers from the contingent reserve. The state tax reserve shall be considered as a part of the contingent reserve.

(5) Any losses may be charged against general reserves; except that losses may not be charged against permanent stock until all other reserves available for losses have been depleted. Moreover, losses may not be charged to the contingent reserve until any special reserve set up to absorb such losses has been exhausted. Any determined excess in any other reserve may be transferred to the contingent reserve. Allowance for depreciation of assets shall not be charged against general reserves but shall be charged to undivided profits, surplus, or net earnings.

(6) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, each association shall transfer to general reserves an amount which is not less than five percent of its net earnings until general reserves are equal to ten percent of invested capital (excluding permanent stock). If, after having reached ten percent, general reserves should fall below ten percent of invested capital (excluding permanent stock), credits of five percent of net income shall be resumed until general reserves shall again equal ten percent of invested capital (excluding permanent stock). General reserves may be increased over the required ten percent in any amount as may be determined by the board of directors to be for the best interest of the association. Notwithstanding the number of closing dates fixed for an association, not more than two such transfers shall be required annually, but more frequent transfers may be made by an association with the approval of the commissioner.

(7) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, the board of directors of each association shall declare a dividend on all share accounts, if any, that it then has and may also, from net earnings, declare a dividend on permanent stock in such association, but no association shall be required to distribute earnings on Christmas savings shares or deposits or other short-term savings shares or deposits or on share or deposit balances of less than an amount specified by the board of directors, if said amount is disclosed to shareholders or depositors in advance, including reasonable notice of changes. In lieu of or in addition to such net earnings, all or any part of undivided profits or surplus of an association may be likewise distributed, but no funds received as part of the sale price of permanent stock or paid in as an assessment shall be distributed as a cash dividend on permanent stock.

(8) Dividends shall be declared on and pro rata to the certificate value of each share at the beginning of the dividend period, plus payments made thereon during the dividend period (less amounts withdrawn and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided in subsection (9) of this section.

(9) The date of investment shall be the date of actual receipt of such payments by the association unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on shares or designated classes thereof. Payments affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month.

(10) Payments affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month.

(11) In all mutual associations issuing limited dividend shares, no dividends shall be paid or credited on fully participating free shares until all current maximum dividends on

limited dividend shares have been paid or credited and until at least an equal dividend has been credited to fully participating loan shares.

(12) In permanent stock associations, no dividends shall be declared on the permanent stock until all current maximum dividends on limited dividend shares have been paid or credited.

(13) With approval of the commissioner, associations may pay a variable rate of dividends on shares.

(14) Notwithstanding any other provision of the Colorado "Savings and Loan Association Law", article 40 of this title, any association may distribute earnings on its shares on such other dates, on such other bases, and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the federal office of thrift supervision or its successor or the federal deposit insurance corporation or its successor for federal savings and loan associations when such regulations are approved by the commissioner.

(15) A depreciation reserve, an unearned profits account, an interest due and uncollected account, and a bonus reserve shall be set up and maintained when required.

**Source:** L. 33: p. 364, § 26. CSA: C. 25, § 94. L. 39: p. 254, § 30. CRS 53: § 122-3-11. L. 59: p. 661, § 4. C.R.S. 1963: § 122-3-11. L. 72: p. 617, § 152. L. 73: p. 1237, § 4. L. 77: (7) amended, p. 572, § 2, effective June 4. L. 83: (6) and (7) amended, p. 491, § 4, effective April 26. L. 2004: (2) repealed and (14) amended, pp. 151, 138, §§ 58, 19, effective July 1.

**11-42-112. Requirements for sale of permanent stock.** (1) No association shall sell, offer for sale, negotiate for the sale of or take subscriptions for, or issue any of its permanent stock until it has first applied for and secured from the commissioner a permit authorizing it so to do. Such application shall be in writing, verified, and filed with the commissioner. In such application, the association shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its stock and shares, a copy of any prospectus or advertisement or other description of its stock to be distributed or published, a copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock, and such additional information concerning the association, its condition, and its affairs as the commissioner may require. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith.

(2) If he finds that the proposed issue is such as will not mislead the public as to the nature of the investment or will not work a fraud upon the purchaser thereof, the commissioner shall issue to the association a permit authorizing it to issue and dispose of its stock in such amounts as the commissioner may in such permit provide; otherwise he shall deny the application and notify the association in writing of his decision.

(3) Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the stock permitted to be issued. The commissioner may impose conditions requiring the impoundment of the proceeds from the sale of such stock and limiting the expense in connection with the sale thereof and such other conditions as he may deem reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in such permit. The commissioner from time to time may amend, alter, or revoke any permit issued by him or temporarily suspend the rights of such association under such permit. The commissioner has the power to establish such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this section.

**Source:** L. 33: p. 318, § 2. CSA: C. 25, § 26. CRS 53: § 122-3-12. C.R.S. 1963: § 122-3-12.

**11-42-113. Redemption of shares or stock.** Every savings and loan association may redeem its shares or stock and repay the funds acquired thereby with such earnings as the



same may be entitled to according to the terms of the issue thereof if the same are no longer required for the purposes of the association upon giving thirty days' written notice in the manner provided in the bylaws of the association, but the association cannot redeem permanent stock. The method of redemption shall be prescribed in the bylaws of the association.

**Source:** L. 33: p. 355, § 9. CSA: C. 25, § 77. CRS 53: § 122-3-13. C.R.S. 1963: § 122-3-13.

**11-42-114. Bonus plan.** (1) Any association may adopt a plan for the payment of a cash bonus to members agreeing to make share investments in order to provide funds for the financing of homes. Such plan, before being adopted, shall be approved by a majority of the members of the board of directors at any regular or special meeting thereof and shall become effective upon the filing with and approval of the commissioner. The board of directors at any regular or special meeting may abolish the bonus plan as to shares purchased after the date of such action.

(2) After adoption and approval of such bonus plan, the board of directors shall transfer out of net earnings to an account designated "bonus reserve" an amount which, together with existing credits to the bonus reserve, is sufficient to pay the bonus on all accounts then entitled to participation in the bonus reserve in accordance with the provisions of this section. The board of directors may transfer any excess in the bonus reserve to the undivided profits account.

**Source:** L. 33: p. 357, § 13. CSA: C. 25, § 81. L. 39: p. 254, § 29. CRS 53: § 122-3-14. L. 59: p. 664, § 5. C.R.S. 1963: § 122-3-14.

**11-42-115. Power to issue shares to minors or in trust.** (1) Every association has the power to issue stock or shares to a minor of any age and either sex and receive payments thereon from, by, or for the minor. He shall be entitled to withdraw, transfer, or pledge any such shares owned by him and to receive from such association any dividends or other moneys at any time becoming due thereon in the same manner and subject to the same conditions as an adult, and his receipt or acquittance therefor shall constitute a valid release and discharge to the association for the payment of such moneys. The dealing of an association with a minor shall have the same effect upon the association's liability as if the minor were of full legal capacity, until his guardian or conservator files with the association a certified copy of the order of a Colorado court having jurisdiction appointing the guardian or conservator and directing otherwise.

(2) Subject to such regulations as the board of directors of the association may prescribe, an association may contract with the proper authorities of any public or nonpublic elementary or secondary school or any public or charitable institution caring for minors for the participation by the association in any school or institutional thrift or savings plan.

(3) Every association has power to issue stock or shares to any person on a revocable trust for another person, who is either named in writing as beneficiary thereof or who is unnamed. At any time during the lifetime of the trustee, the stock or shares, together with dividends, if any, shall be withdrawn only by the trustee. On the death of the trustee, the stock or shares, together with dividends, if any, shall be paid to the person for whom the stock or shares were issued as designated beneficiary, even though the beneficiary is not of full legal capacity, and, if there is no designated beneficiary living at that time, then to the personal representative of the trustee.

(4) The foregoing authorization shall not be construed as providing an exclusive method for a trustee to invest in stock or shares of an association. Nothing contained in this section shall be construed as limiting or repealing either section 28-5-214 or 28-5-301, C.R.S., with respect to investment of funds by guardians and conservators of minor and incompetent beneficiaries of the veterans administration, heretofore or hereafter appointed, or part 3 of article 1 of title 15, C.R.S., with respect to investments by fiduciaries.

**Source:** L. 33: p. 351, § 1. CSA: C. 25, § 69. CRS 53: § 122-3-15. L. 57: p. 652, § 1. C.R.S. 1963: § 122-3-15. L. 79: (1) amended, p. 647, § 3, effective July 1. L. 2002: (3) amended, p. 1359, § 7, effective July 1.

**Cross references:** For competence of persons 18 years of age or older generally, see § 13-22-101.

**11-42-116. Joint accounts.** Except as to accounts, which are defined in and which are paid as provided in article 15 of title 15, C.R.S., where shares or stock of an association is issued in the name of two or more persons or the survivors of them, such shares or stock and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants, and the same, together with dividends, shall be held for the exclusive use of such persons and may be paid to either or any of them during their lifetimes or to the survivors of them after the death of one or more of them, and such payment and the receipt and acquittance of the persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or stock.

**Source:** L. 33: p. 351, § 2. CSA: C. 25, § 70. CRS 53: § 122-3-16. C.R.S. 1963: § 122-3-16. L. 73: p. 1649, § 14. L. 75: Entire section amended, p. 587, § 3, effective July 1. L. 90: Entire section amended, p. 920, § 4, effective July 1.

**11-42-117. Notice of intention to withdraw.** Each association may, at its option, prescribe a period or periods of notice of intention to withdraw. The period of any such notice of intention to withdraw shall not exceed sixty days. All notices of intention to withdraw shall be set forth and be a part of the bylaws of the association. All periods of notice of intention to withdraw shall be disclosed to members at the time of opening an account and shall appear on the shares as described in section 11-42-101. Each association may prescribe by its bylaws the terms and conditions of withdrawal which are not contrary to the provisions of articles 40 to 46 of this title. The shares shall state that the right of withdrawal is subject to the provisions of articles 40 to 46 of this title. This section shall not apply to tax and loan accounts, note accounts, or similar accounts when, subject to the regulations of the United States treasury, the association is serving as a depository for federal taxes or as a treasury tax and loan depository.

**Source:** L. 33: p. 319, § 1. CSA: C. 25, § 27. CRS 53: § 122-3-17. C.R.S. 1963: § 122-3-17. L. 79: Entire section amended, p. 432, § 8, effective June 19. L. 83: Entire section R&RE, p. 501, § 1, effective May 23.

**11-42-118. Form of notice.** Any notice of intention to withdraw shall be invalid unless it is given in writing and is signed by a member entitled to make a withdrawal.

**Source:** L. 33: p. 320, § 2. CSA: C. 25, § 28. CRS 53: § 122-3-18. C.R.S. 1963: § 122-3-18. L. 83: Entire section amended, p. 501, § 2, effective May 23.

**11-42-119. Filing of notice.** All notices of intention to withdraw shall be filed when received by each association in the order in which they are received, and each shall be kept on file with the exact time of the receipt thereof noted thereon, or recorded, until it is paid or cancelled at the written request of the member.

**Source:** L. 33: p. 320, § 3. CSA: C. 25, § 29. CRS 53: § 122-3-19. C.R.S. 1963: § 122-3-19. L. 83: Entire section amended, p. 501, § 3, effective May 23.

**11-42-120. Shares or account not withdrawable.** No member whose shares are pledged or whose account is pledged as security for a real estate loan from the association issuing such shares or accepting such account shall be permitted to make a withdrawal or



be entitled to give any valid notice of intention to withdraw in respect of such shares or account until the indebtedness for which such shares are pledged or for which such account is pledged as security has been fully paid; except that withdrawals may be made without notice if the full amount of such withdrawals is used to pay such indebtedness or any part thereof.

**Source:** L. 33: p. 320, § 4. CSA: C. 25, § 30. CRS 53: § 122-3-20. C.R.S. 1963: § 122-3-20. L. 83: Entire section amended, p. 502, § 4, effective May 23.

**11-42-121. Payment of withdrawals.** (1) In case the funds of an association applicable to withdrawals are not sufficient to pay off all members desiring to withdraw, such members may be paid off in either one of two methods, dependent upon which method the board of directors of the association may desire to follow, in full in the order in which withdrawal notices are filed or on a pro rata basis, as follows:

(a) In the event an association elects to pay withdrawals in full in the order in which withdrawal notices are filed, all notices of withdrawal shall be filed in writing in order of time in which filed, and shall be kept in numerical order and so numbered, and shall be paid in the order filed as funds are available for that purpose.

(b) As to associations which elect to pay withdrawals on a pro rata basis, all shares or accounts on which notices of withdrawal have been filed during any period of notice shall receive their pro rata share of the funds available for withdrawal at the end of such notice period, based upon the withdrawal value of the shares or account at the time distribution is made.

(c) Repealed.

(2) Notice of withdrawal shall not make such withdrawing member a creditor of the association.

(3) As to all shares on which a withdrawal notice is on file, the holder thereof shall be entitled to the same rate of dividends paid like shares not on withdrawal.

(4) In all cases, withdrawals shall be governed by the bylaws of the association insofar as such bylaws are not in conflict with the provisions of articles 40 to 46 of this title.

**Source:** L. 33: p. 321, § 5. CSA: C. 25, § 30. CRS 53: § 122-3-20. C.R.S. 1963: § 122-3-20. L. 83: IP(1), (1)(a), (1)(b), and (2) amended and (1)(c) repealed, pp. 502, 503, §§ 5, 7, effective May 23.

**11-42-122. Limitation on withdrawals.** (1) If an association has on file more withdrawal requests than can be met in full from current funds, the association shall apply to such withdrawals one-half of the monthly receipts, after first deducting the amount necessary to pay the actual and reasonable expenses incurred in the operation of the association and the protection of its assets and reserves set up by it for cash dividends on its shares; except that, should such one-half fail to retire at least five percent of the aggregate withdrawal requests, such portion of the other one-half shall be applied as shall be necessary to retire five percent of the total amount on withdrawal.

(2) "Receipts", as used in this section, means all funds coming into the hands of the association except borrowed money.

**Source:** L. 33: p. 322, § 6. CSA: C. 25, § 32. CRS 53: § 122-3-22. C.R.S. 1963: § 122-3-22.

**Editor's note:** Subsections within this section were renumbered on revision to conform to statutory numbering format.

#### ANNOTATION

**Annotator's note.** Cases relevant to § 11-42-122, which were decided prior to its earliest

source, L. 33, p. 322, § 6, have been included in the annotations to this section.

**Withdrawals are payable in the order filed** and, under the limitations of this section, a late comer may be refused payment for the time being. *Hawley v. North Side Bldg. & Loan Ass'n*, 11 Colo. App. 93, 52 P. 408 (1898).

**Members have no priority.** Certificates providing that the holder is a member of the association can have no priority in withdrawals. *Exch. Nat'l Bank v. Receivers of City Sav. Bldg. & Loan Ass'n*, 95 Colo. 498, 37 P.2d 394 (1934).

**Offer to pay less than sum due constitutes refusal to pay and authorizes suit.** Under this

section, an offer by a building and loan association to pay to a withdrawing member a lesser sum than he is legally entitled to at the time his notice of withdrawal is complete is such a refusal to pay the sum actually owing, as would authorize the institution of a suit to compel payment. *Enter. Bldg. & Loan Soc'y v. Bolin*, 12 Colo. App. 304, 55 P. 740 (1898).

**Section inapplicable to payment of a certificate of deposit.** *Dollar Bldg. & Loan Ass'n v. Shields*, 93 Colo. 480, 27 P.2d 485 (1933).

**11-42-123. Matured shares.** If, at the time shares in a savings and loan association have matured, the association has withdrawal notices on file to such an extent that the funds of the association, applicable to withdrawals, are not sufficient to pay off all shareholders desiring to withdraw, as well as shares which have matured and are unpaid, and the holder of the matured shares desires to withdraw, he shall file a notice of intention to withdraw and thereafter be subject to all the rights and liabilities of articles 40 to 46 of this title governing withdrawing shareholders; except that he shall be entitled to the full amount of any dividends declared on like shares during the time he has a withdrawal notice on file on same.

**Source:** L. 33: p. 323, § 7. CSA: C. 25, § 33. CRS 53: § 122-3-23. C.R.S. 1963: § 122-3-23.

**11-42-124. Applicable to previously issued certificates.** All stock or shares or certificates or instruments of whatsoever kind issued by savings and loan associations prior to June 8, 1933, evidencing savings in said associations by the holders thereof, except permanent or nonwithdrawable stock, shall be subject to all the rights and all the liabilities of articles 40 to 46 of this title, and such holders shall be treated as shareholders.

**Source:** L. 33: p. 323, § 8. CSA: C. 25, § 34. CRS 53: § 122-3-24. C.R.S. 1963: § 122-3-24.

**11-42-125. Associations authorized to accept deposit accounts.** (1) Any other provision of articles 40 to 46 of this title to the contrary notwithstanding, any association organized under articles 40 to 46 of this title may be organized as, or may convert to, an association authorized to accept savings deposits. No association shall accept savings deposits of the type provided for by this section unless its articles of incorporation and bylaws shall specifically provide, or have been amended to provide, for the acceptance of such deposits. For the purposes of this section, all associations authorized to accept savings deposits shall be referred to as "deposit associations", and other associations organized under articles 40 to 46 of this title shall be referred to as "share associations".

(2) Except as provided in this section, no deposit association shall issue or sell shares, as otherwise provided in articles 40 to 46 of this title, except permanent stock in the case of associations organized as permanent stock companies; but all shares issued and outstanding at the time an association converts to a deposit association shall retain their status as shares with the same relative rights, privileges, duties, and obligations otherwise applicable to shares in a share association, unless the holders thereof exchange or convert such shares to savings deposits. If any law, rule, regulation, order, or decision regulating federal savings and loan associations hereafter authorizes federal savings and loan associations to accept both savings accounts, other than savings deposits (or issue and sell shares), and savings deposits having substantially the same characteristics as deposits permitted by this section, the commissioner, by rules and regulations duly adopted, may authorize deposit associations to issue shares or accept accounts having the same relative



rights and other characteristics permitted by such federal law, rule, regulation, decision, or order, subject to the same limitations, restrictions, prohibitions, conditions, and provisions, to the extent found by the commissioner to be applicable, as are provided from time to time by such federal laws, rules, regulations, decisions, or orders.

(3) Except as otherwise specifically provided in this section and except to the extent that such construction clearly would be inconsistent with the provisions and intent of articles 40 to 46 of this title, all references in articles 40 to 46 of this title (other than in this section) to shares or share accounts and to the owners or holders of shares or share accounts or to shareholders shall, with respect to the savings deposits authorized by this section, be applicable in the same manner and to the same extent that they would be applicable if such savings deposits were share interests in the association, and, except as provided in this section, the relationships between a deposit association and the holders of savings deposits therein shall be the same, and they shall have or be subject to the same rights, privileges, options, discretions, duties, obligations, restrictions, limitations, prohibitions, and conditions, as if the savings deposits were shares or the depositors were shareholders in a share association, including, but without limitation, the right of savings deposit holders to be members of the association and to have voting rights therein and the right of such associations to issue accounts to minors or in trust, to issue joint accounts, to adopt bonus plans, to issue permanent stock, and to otherwise conduct their operations in the manner provided by the provisions of articles 40 to 46 of this title.

(4) Notwithstanding any other provisions of articles 40 to 46 of this title, in the event of voluntary or involuntary liquidation, dissolution, or winding up of a deposit association or in the event of any other situation in which the priority of savings deposits authorized by this section is in controversy, all savings deposits, to the extent of their certificate value or withdrawal value at the time of the determination of priority, shall be deemed debts of the association, having the same priority as the claims of all general creditors of the association who do not have priority, other than any priority arising or resulting from consensual subordination, over other general creditors of the association, and, in addition, such savings deposits shall have the same right to share in the remaining assets of the association that they would have had if they were shares of such association. If, at the time of the determination of priority, there are outstanding in a deposit association any shares or share accounts in the association, such shares or share accounts shall, to the extent of their certificate value or withdrawal value, have the same priority as against other creditors or claimants as if they were savings deposits.

(5) The provisions of sections 11-42-117 to 11-42-123 shall be applicable to savings deposits, but any deposit association which fails to make full payment on any withdrawal demand within ten days after expiration of any advance notice period prescribed by the association's bylaws and permitted by articles 40 to 46 of this title may be found by the commissioner to be conducting its business in an unsafe or unauthorized manner or to be in an unsafe condition and subject to the penalties or actions resulting from such findings, including, but without limitation, the actions prescribed by sections 11-44-110 and 11-44-116.

(6) The provisions of sections 11-41-131 and 11-44-116 respecting the voluntary and involuntary liquidation of an association shall apply to all deposit associations, except to the extent that the order of priority of payment as between the claims of creditors, holders of savings deposits, shareholders, holders of permanent stock, or other investors is changed by the provisions of this section.

(7) If the laws, rules, regulations, orders, or decisions applicable to federal savings and loan associations hereafter authorize federal savings and loan associations to pay or contract to pay interest at an agreed rate on deposits or on one or more classes of deposits, then, deposit associations organized and operating under articles 40 to 46 of this title may likewise pay or contract to pay interest, subject to such restrictions, limitations, prohibitions, conditions, and requirements as the commissioner, by rules and regulations duly adopted and applicable to all deposit associations, may prescribe.

(8) In order to achieve substantial equality between deposit associations operating pursuant to the provisions of this section and federal savings and loan associations authorized to accept savings deposits, the commissioner is authorized, by rule or regulation

duly adopted, to impose or grant, to the extent consistent with the provisions of articles 40 to 46 of this title, the same restrictions, limitations, prohibitions, conditions, requirements, duties, liabilities, provisions, authorities, powers, rights, options, and discretions as are from time to time applicable to federal savings and loan deposit associations under the laws, rules, regulations, orders, and decisions applicable to such federal savings and loan associations.

(9) Savings deposits in a deposit association shall be evidenced by such certificates, account books, or passbooks as the association could issue or would be required to issue for a corresponding share account if it were not a deposit association; but any such certificate, account book, or passbook shall be modified so as to clearly reveal that the interest or obligation evidenced thereby is a savings deposit and not a share or share account in the issuing association. The term "invested capital", as applied to a deposit association, shall include the certificate values of all savings deposits therein. A deposit association may accept such one or more types of savings deposits as are permitted by the bylaws of the association, if such deposits are of a type and kind that may be accepted by savings and loan associations insured by the federal deposit insurance corporation or its successor.

(10) Any provision to the contrary notwithstanding, all shares or accounts in a federal or state chartered savings and loan association having substantially the same relative rights and characteristics as either shares or savings deposits provided for by this section, whether described or referred to as shares, savings shares, investment shares, share accounts, certificates, certificate accounts, savings accounts, savings deposits, or any other similar name, shall be deemed the equivalent of each other for all purposes involving the right or authority to invest or deposit public or private funds, including funds held in trust or any other fiduciary capacity, in any such association; and, if, by any law, statute, ordinance, resolution, rule, regulation, order, decision, agreement, declaration, trust agreement, last will and testament, or other similar enactment or instrument, the state of Colorado or any of its counties, municipalities, districts, or other political subdivisions, including special districts authorized by law, or any institution, agency, official, instrumentality, or department of any of the foregoing, or any bank, savings bank, industrial bank, credit union, fraternal benefit society, trust deposit and security company, trust company, or other financial institution, or any insurance company, or any agent, executor, administrator, trustee, custodian, or other fiduciary or agent, including trustees or custodians of public or private pension or retirement funds, is authorized or required to invest or deposit such public or private funds in the shares of a federal or state chartered savings and loan association or in any one or more of the other types of savings and loan accounts named in this subsection (10), such funds may also be invested or deposited in any one or more of the other types of accounts, specified in this subsection (10), in such an association, whether the earnings to be paid on such accounts are in the form of dividends or of interest.

**Source:** L. 69: p. 1017, § 12. C.R.S. 1963: § 122-3-25. L. 83: (5) amended, p. 502, § 6, effective May 23. L. 2004: (9) amended, p. 151, § 59, effective July 1.

## ARTICLE 43

### Foreign Savings and Loan Associations

11-43-101. Restrictions on foreign associations.

**11-43-101. Restrictions on foreign associations.** No foreign savings and loan association which conducts a savings and loan business as defined in section 11-40-103 shall operate an office in this state in order to sell its shares or accounts or make new loans in this state. Violation of this section is a class 2 misdemeanor which shall subject the offender and its officers, agents, and representatives, upon conviction thereof, to the penalties which are authorized in section 18-1.3-501 (1), C.R.S., and each separate business transaction in



violation of this section shall constitute a separate offense; but nothing in this section shall be construed to prohibit a foreign association from transacting business in respect to executory contracts in force on May 17, 1939.

**Source:** L. 33: p. 324, § 1. CSA: C. 25, § 35. L. 39: p. 242, § 15. CRS 53: § 122-4-1. C.R.S. 1963: § 122-4-1. L. 88: Entire section amended, p. 455, § 2, effective March 18. L. 2002: Entire section amended, p. 1471, § 40, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

## ANNOTATION

**Law reviews.** For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

**Section applies to a foreign corporation, authorized by its charter to raise a fund by small periodical payments** from which loans may be made to those who contributed to such funds, and which is conducting a business of this character, even though not technically a building and loan association. *People ex rel. Griffith v. Standard Home Co.*, 59 Colo. 355, 148 P. 869

(1915) (decided prior to L. 33, p. 324, § 1, the earliest source of this section).

**This section is a "doing business law".** Even though this section regulates foreign savings and loan associations by prohibitions rather than by conditions, it is still a "doing business law". In addition, imposition of criminal sanctions, such as those in this section, is not atypical of a "doing business law". *Title Ins. Co. of Minn. v. Am. Sav. & Loan Assn.*, 866 F.2d 1284 (10th Cir. 1989).

## ARTICLE 44

### Division of Financial Services

11-44-101.	Division of financial services created.	11-44-109.	Examination by commissioner - procedure - penalty.
11-44-101.4.	Definitions.	11-44-110.	Power to take possession of association.
11-44-101.5.	Division subject to termination - repeal of article.	11-44-110.5.	Supervisory mergers.
11-44-101.6.	Financial services board - creation.	11-44-111.	Appeal from commissioner's action.
11-44-101.7.	Powers of the financial services board.	11-44-112.	Appointment of commissioner as receiver - assignment for benefit of creditors prohibited.
11-44-101.8.	Review of commissioner actions by financial services board - judicial review.	11-44-113.	Procedure under court order.
11-44-102.	Commissioner - duties - employees.	11-44-114.	Noncompliance with orders - penalty.
11-44-103.	Powers of commissioner.	11-44-115.	Officers to furnish schedule of property.
11-44-103.5.	Record retention by the commissioner.	11-44-116.	Liquidation powers of commissioner.
11-44-104.	Commissioner may delegate powers.	11-44-117.	Setoffs.
11-44-105.	Commissioner may institute suits.	11-44-118.	Commissioner and deputy not to accept gifts.
11-44-106.	Issuance of subpoenas.	11-44-119.	Association's right to resort to court.
11-44-106.5.	Suspension or removal of directors, officers, or employees.	11-44-120.	Records of commissioner.
11-44-107.	Confidentiality.	11-44-121.	Commissioner may destroy records. (Repealed)
11-44-108.	Seal of commissioner. (Repealed)	11-44-122.	Waiver of membership or stockholder voting.
		11-44-123.	Assessment of civil money penalties.

**11-44-101. Division of financial services created.** There is hereby created a division of financial services, within the department of regulatory agencies, which shall be administered by the state commissioner of financial services. When any law of this state refers to the savings and loan department of the state of Colorado, said law shall be construed as referring to the division of financial services.

**Source:** L. 33: p. 331, § 1. CSA: C. 25, § 47. CRS 53: § 122-6-1. C.R.S. 1963: § 122-5-1. L. 68: p. 125, § 126. L. 89: Entire section amended, p. 616, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For comment on United States Bldg. & Loan Ass'n v. McClelland, appearing below, see 7 Rocky Mt. L. Rev. 156 (1935).

**This is a comprehensive article creating a building and loan department of the state,** defining its powers, and giving it supervision over all foreign and domestic building and loan corporations doing business in this state, with power to grant certificates of business. United States Bldg. & Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

**It is a valid legislative enactment.** Building and loan associations exercise quasi-banking functions, soliciting the savings and funds of the public, especially of those in more modest circumstances. The general assembly violates no constitutional guaranty in declaring them affected with a public interest and in providing, within proper limits, supervision and control for the protection of the investor. United States Bldg. & Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

**11-44-101.4. Definitions.** As used in articles 30 and 40 to 46 of this title, unless the context otherwise requires, "board" means the financial services board, created in section 11-44-101.6.

**Source:** L. 93: Entire section added, p. 1447, § 9, effective June 6.

**11-44-101.5. Division subject to termination - repeal of article.** (1) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of financial services created by section 11-44-101.

(2) This article is repealed, effective July 1, 2013.

**Source:** L. 76: Entire section added, p. 621, § 4, effective July 1. L. 89: Entire section amended, p. 616, § 2, effective July 1. L. 91: Entire section amended, p. 678, § 6, effective April 20. L. 94: (2) amended, p. 66, § 9, effective July 1. L. 2004: (2) amended, p. 138, § 20, effective July 1.

**11-44-101.6. Financial services board - creation.** (1) There is hereby established in the division the financial services board which shall consist of five members.

(2) (a) There shall be three members who during their tenure are, and shall remain, executive officers of state credit unions and shall have not less than five years' practical experience as an active executive officer of a credit union.

(b) There shall be one member who during such member's tenure is, and shall remain, the executive officer of a state savings and loan association and shall have not less than five years' practical experience as an active executive officer of a savings and loan association.

(c) There shall also be one member to serve as a public member of the board who shall have expertise in finance through current experience in business, industry, agriculture, or education.

(d) Not more than three members shall be of the same major political party. No member of the board shall have any interest, direct or indirect, in a financial institution in which another member of the board shall have any such interest.

(3) Members shall be appointed by the governor, with the consent of the senate. Appointments shall take effect on July 1, 1993. The term of office of each member shall be



four years with the exception of the first appointments wherein two members shall be appointed for a two-year term to effect the staggering of terms. The governor may, after notice and hearing, remove a member for cause. Any board member who is absent from three consecutive board meetings is subject to immediate removal by the governor.

(4) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.

(5) The board shall meet at least once every three months. The chair of the board may call additional meetings of the board upon at least seventy-two hours' notice to all members of the board and shall do so upon the request of two members. All members of the board shall be subject to immediate call in the event of an emergency. Three members of the board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under articles 30 and 40 to 46 of this title. In the event that less than a quorum of the board is present during the conduct of the hearing, at least a quorum of the board shall read the entire record before voting thereon. No member who is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder of a corporation, partnership, or unincorporated association which is a party to a proceeding before the board shall participate in such a proceeding. A member may disqualify himself or herself from participating in a proceeding for any other cause deemed by the member to be sufficient.

(6) A quorum may be established by means of a conference telephone call which shall be recorded in the board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the board may hold an executive session to consider certain matters required by statute to be kept confidential under articles 30 and 40 to 46 of this title. Any agenda and the minutes of executive sessions shall be kept confidential by the board.

(7) Such clerical, technical, and legal assistance as the board may require shall be provided by the division.

(8) The members of the board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Any person who willfully violates this oath is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(9) The board shall elect a chair from among its members to serve for a term not exceeding two years, as determined by the board. No chair shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (4) of this section, the chair shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the board.

(10) For the fiscal year beginning July 1, 1993, all moneys necessary to fund the board, including but not limited to per diem compensation and reimbursement of expenses for board members, shall be transferred from the moneys allocated for travel expenses for the division.

**Source: L. 93:** Entire section added, p. 1447, § 9, effective June 6. **L. 95:** (4) amended, p. 637, § 20, effective July 1. **L. 96:** (4) amended, p. 1513, § 40, effective June 1.

**11-44-101.7. Powers of the financial services board.** (1) The board is the policy-making and rule-making authority for the division and has the power to:

(a) Regulate its own procedure and practice; and

(b) Make, modify, reverse, and vacate rules for the proper enforcement and administration of articles 30 and 40 to 46 of this title and article 13 of title 12, C.R.S.

(2) In addition to any other powers conferred on it by articles 30 and 40 to 46 of this title, the board has the power to:

(a) Make all final decisions with respect to the organization, conversion, or merger of credit unions and savings and loan associations and administration of life care institutions or providers pursuant to article 13 of title 12, C.R.S.;

(b) Make all final decisions with respect to the suspension or liquidation of credit unions and savings and loan associations under article 30 of this title and this article.

(c) (Deleted by amendment, L. 95, p. 1092, § 3, effective May 31, 1995.)

(3) The board has the power to:

(a) Prohibit the taking of shares or deposits or to restrict the withdrawal of shares or deposits, or both, from any one or more state credit unions or savings and loan associations when the board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state credit union or savings and loan association;

(b) Authorize state credit unions and savings and loan associations to engage in any activity in which such financial institutions could engage were they operating under a federal charter or certificate of approval at the time such authority is granted, so long as such activity is not prohibited by state law and to the extent permissible under the rules and regulations of the board;

(c) Affirm, modify, reverse, vacate, or stay the enforcement of any order, ruling, or determination made by the commissioner acting pursuant to authority delegated by the board;

(d) Issue a declaratory order with respect to the applicability of article 13 of title 12, C.R.S., articles 30 and 40 to 46 of this title, or any rule and regulation issued by the board to any person, property, or state of facts under said provisions;

(e) Review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies;

(f) Annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly to the division;

(g) Comment to the executive director of the department of regulatory agencies on who shall be the commissioner and to recommend to said executive director the termination of the commissioner for cause;

(h) Perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in article 13 of title 12, C.R.S., and articles 30 and 40 to 46 of this title;

(i) Issue subpoenas and require attendance of any and all officers, directors, and employees of any credit union, savings and loan association, small business development credit corporation, or life care institution or provider, and such other witnesses as the board may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the board, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the board. Upon application of the board and subject to any protective order which may be entered by a district court, any person served with a subpoena issued by the board may be required, by order of the district court of the county where the credit union, savings and loan association, small business development credit corporation, or life care institution or provider has its principal office, to appear and answer such questions as may be put to such person by the board and be required to produce such books, papers, or documents in such person's possession as may be required by the board.

(4) The board may issue cease-and-desist orders, suspend a director, officer, or employee of a credit union or savings and loan association, or assess civil money penalties, in the same manner as provided in section 11-30-106 (7) and (8), concerning powers of the commissioner, and section 11-44-106.5, concerning suspension or removal of directors, officers, or employees, and as provided in sections 11-30-106.5 and 11-44-123, concerning assessment of civil money penalties by the commissioner.



(5) Except with respect to the organization of community charter credit unions, the board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions.

(6) The board may, in its discretion, require the commissioner to report to the board periodically with respect to any powers delegated pursuant to subsection (5) of this section.

(7) The board shall have the power to approve or deny merger agreements for credit unions as provided in section 11-30-122. Mergers involving a community charter shall be subject to a public hearing pursuant to section 11-30-101.7.

(8) Repealed.

**Source:** L. 93: Entire section added, p. 1449, § 9, effective June 6. L. 94: (3)(b) amended and (8) repealed, pp. 66, 67, §§ 10, 11, effective July 1. L. 95: (2)(a), (2)(c), (3)(d), and (3)(h) amended, p. 1092, § 3, effective May 31. L. 99: (1) amended, p. 1011, § 4, effective August 4.

**11-44-101.8. Review of commissioner actions by financial services board - judicial review.** (1) (a) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, may appeal to the board any actions taken pursuant to authority delegated by the board pursuant to section 11-44-101.7 (5) or as otherwise specifically provided by statute. Notice of such appeal shall be filed with the commissioner within thirty days after such findings, ruling, order, decision, or other action. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is based. Within sixty days after the appeal is filed, the board shall fix a date, time, and place for hearing the appeal and shall notify the credit union, savings and loan association, or life care institution or provider at least thirty days prior to the date of said hearing. Any such action of the commissioner may be stayed by the board pending the appeal to the board. The findings, order, decision, ruling, or other action of the board shall be deemed final agency action.

(b) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to paragraph (a) of this subsection (1) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from an institution.

(2) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, or any other party, aggrieved or directly affected by a final order of the board, may obtain judicial review thereof by filing an action for review pursuant to the provisions of section 24-4-106, C.R.S., with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S. The commencement of such proceeding does not, unless specifically ordered by the court, operate as a stay of the board's ruling, order, decision, or other action.

**Source:** L. 93: Entire section added, p. 1451, § 9, effective June 6. L. 94: (2) amended, p. 67, § 12, effective July 1. L. 95: (2) amended, p. 1092, § 4, effective May 31. L. 97: (2) amended, p. 8, § 1, effective March 13. L. 99: (1) amended, p. 1011, § 5, effective August 4. L. 2004: (1)(a) amended, p. 138, § 21, effective July 1.

**11-44-102. Commissioner - duties - employees.** (1) The head of the division of financial services shall be the state commissioner of financial services, referred to in this article as the "commissioner". The commissioner shall have had at least five years' practical experience in the operation or regulation of financial institutions or financial service operations. The commissioner shall be appointed by the executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution.

(2) The commissioner may appoint, pursuant to section 13 of article XII of the state constitution, a deputy commissioner of financial services, a secretary, and such other employees as deemed necessary for the proper conduct of the division.

(3) The deputy commissioner, the secretary, and all other employees of the division shall be under the direct supervision of the commissioner who shall have full power and control over such employees. Neither the commissioner nor any officer or employee of the division shall be personally liable for any acts done in good faith while in the performance of his duties as prescribed by law.

(4) Before entering upon their duties, the commissioner and deputy commissioner shall each give bond, executed by a responsible surety company, running to the people of the state of Colorado, in the penal sum of ten thousand dollars, conditioned upon the faithful and impartial discharge of their respective duties and the proper accounting for all funds which may come into their hands as such officers. Said bonds shall be approved by the governor, and the bonds, together with their oaths of office and the approval of the governor endorsed thereon, shall be filed with the secretary of state. The cost of such bonds shall be charged as an expense of the division of financial services. Suits may be maintained on such bonds in the name of the people of the state of Colorado for the use of the party injured by a breach of the conditions thereof.

(5) (Deleted by amendment, L. 2004, p. 138, § 22, effective July 1, 2004.)

(6) The commissioner, the deputy commissioner, the secretary, and all employees shall be reimbursed for all necessary expenses of their office, including all traveling expenses necessarily incurred in the performance of their duties, upon vouchers therefor properly itemized and filed in accordance with law.

(7) Repealed.

(8) (a) Neither the commissioner nor any employee of the division shall:

(I) Be an officer, director, committee member, attorney for, or stockholder in any credit union or savings and loan association; or

(II) Receive, directly or indirectly, any payment, gratuity, or compensation from any institution over which the division has regulatory authority.

(b) The provisions of paragraph (a) of this subsection (8) shall not prohibit the commissioner or any employee of the division from being a depositor, account holder, borrower, or user of other available financial services on the same terms as are available to the general public or membership.

(c) Notwithstanding any provision of this subsection (8) to the contrary, this subsection (8) shall not prohibit the credit union or savings and loan members of the financial services board pursuant to section 11-44-101.6 (2) (a) or (2) (b) from:

(I) Being executive officers in credit unions or savings and loan associations; and

(II) Receiving bona fide compensation as such officers.

**Source:** L. 33: p. 332, § 2. CSA: C. 25, § 48. L. 43: p. 207, § 6. L. 47: p. 315, § 1. CRS 53: § 122-6-2. C.R.S. 1963: § 122-5-2. L. 68: p. 125, § 127. L. 89: (1), (2), and (4) amended, p. 616, § 3, effective July 1. L. 91: (7) added, p. 674, § 3, effective May 1. L. 2004: (1), (2), and (5) amended and (8) added, p. 138, § 22, effective July 1.

**Editor's note:** Subsection (7)(b) provided for the repeal of subsection (7), effective January 1, 1992. (See L. 91, p. 674.)

**11-44-103. Powers of commissioner.** The commissioner has general supervision and control over all domestic and foreign savings and loan associations doing business in this state and has full power to grant, refuse, or revoke a permit or license to any association to do business in this state when such association is not conducting its business in conformity with the laws of the state or is conducting its business in such an unsafe manner as to render its further operations hazardous to the public or any of its shareholders. All articles of incorporation and amendments thereto, all bylaws and amendments thereto, and all certificates of stock and shares of associations subject to articles 40 to 46 of this title shall be submitted to said commissioner for his approval or disapproval, and said commissioner has the authority to approve, modify, or reject any such articles of incorporation or amendments thereto, bylaws or amendments thereto, and certificates of stock or shares. The commissioner has full power and authority to prescribe all necessary and proper rules and



regulations for the conduct and operation of savings and loan associations in this state and shall prescribe the manner in which the books and records of associations doing business in this state shall be kept.

**Source:** L. 33: p. 334, § 3. CSA: C. 25, § 49. CRS 53: § 122-6-3. C.R.S. 1963: § 122-5-3.

#### ANNOTATION

**Constitutional validity not properly raised by the association.** United States Bldg. & Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

**11-44-103.5. Record retention by the commissioner.** The commissioner shall retain records pursuant to part 1 of article 80 of title 24, C.R.S., and may, in his or her discretion, destroy records pursuant to said part 1.

**Source:** L. 2004: Entire section added, p. 139, § 23, effective July 1.

**11-44-104. Commissioner may delegate powers.** The commissioner may delegate such of his powers and authority to his deputies as he may deem necessary for proper administration of the division and may designate appropriate titles for his deputies and any of his employees. Any such delegation or designation made may be rescinded by the commissioner at any time. All such actions shall be in writing and of record in the files of the division. The acts of deputies performing such delegated powers and authority shall be of the same legal effect as if performed personally by the commissioner.

**Source:** L. 39: p. 250, § 21. CSA: C. 25, § 49(1). CRS 53: § 122-6-4. C.R.S. 1963: § 122-5-4.

**11-44-105. Commissioner may institute suits.** The commissioner shall report to the attorney general, and he shall institute and prosecute suits and actions to enjoin violations of articles 40 to 46 of this title or violations of orders or decisions of the commissioner rendered pursuant to said articles and to enforce any civil penalties provided by said articles. The commissioner shall notify the proper district attorney of any violation of the provisions of articles 40 to 46 of this title which constitutes a felony or misdemeanor, and such district attorney shall forthwith prosecute the person charged with such offense. Upon failure or refusal of the district attorney to so prosecute, it shall be the duty of the attorney general to conduct such prosecution.

**Source:** L. 33: p. 335, § 4. CSA: C. 25, § 50. CRS 53: § 122-6-5. C.R.S. 1963: § 122-5-5.

**11-44-106. Issuance of subpoenas.** The commissioner has the power to issue subpoenas and require attendance of any and all officers, directors, agents, salesmen, collectors, and employees of any association and such other witnesses as he may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the commissioner, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the commissioner. Upon application of the commissioner, any person served with a subpoena issued by him may be required, by order of the district court of the county where the association has its principal office, to appear and answer such questions as may be put to him by the commissioner and be required to produce such books, papers, or documents in his possession as may be required by the commissioner.

**Source:** L. 33: p. 336, § 5. CSA: C. 25, § 51. CRS 53: § 122-6-6. C.R.S. 1963: § 122-5-6.

**11-44-106.5. Suspension or removal of directors, officers, or employees.**

(1) (a) The commissioner may suspend or remove any director, officer, or employee of an association who in the opinion of the commissioner has:

(I) Violated the savings and loan association laws or a lawful regulation or order issued thereunder;

(II) Engaged or participated in any unsafe or unsound practice in the conduct of savings and loan business;

(III) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the association and the association has suffered or will probably suffer financial loss or other damage or the interests of account holders may be seriously prejudiced thereby; or

(IV) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the association.

(b) The commissioner may suspend or remove any director, officer, or employee of an association who, under the laws of this state, the United States, or any other state or territory of the United States:

(I) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or

(II) Is subject to an order removing or suspending such individual from office, or prohibiting such individual's participation in the conduct of the affairs of any credit union, savings and loan association, bank, or other financial institution.

(1.2) A suspension or removal order issued pursuant to subsection (1) of this section shall include a description of the grounds for the suspension or removal. A copy of the order shall be sent to the association concerned and to each member of its board of directors.

(2) (a) The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by subsection (1) of this section, at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(b) If the commissioner determines that a specific case involves extraordinary circumstances which require immediate action, he may suspend or remove a person under subsection (1) of this section without notice or a hearing, but he shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.

(c) Any person who performs any duty or who exercises any power of a domestic savings and loan association after receipt of a suspension or removal order under subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

**Source:** **L. 85:** Entire section added, p. 399, § 2, effective May 24. **L. 89:** (1) amended and (2)(d) added, p. 612, §§ 6, 7, effective April 19. **L. 94:** (1) amended and (1.2) added, p. 67, § 13, effective July 1. **L. 2002:** (2)(c) amended, p. 1471, § 41, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (2)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

**11-44-107. Confidentiality.** (1) Neither the commissioner, the commissioner's deputy, or any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (1) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division of financial services or in criminal actions;



(b) Any party entitled to appear in a hearing on an application for a savings and loan association charter or approval of a merger of savings and loan associations shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws;

(c) The commissioner may furnish information as to the condition of a savings and loan association to the federal office of thrift supervision or its successors, a federal home loan bank, the savings and loan departments of other states, an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47 of this title, the executive director of the department of regulatory agencies, or the division of banking;

(d) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies relating to possible misconduct by a person or entity licensed by said agency;

(e) The board, the commissioner, and their respective designees may exchange information obtained by the division of financial services as to possible criminal violations of law relating to the activities of a savings and loan association with the appropriate law enforcement agencies; and

(f) Notwithstanding any provision contained in this article to the contrary, the commissioner, the commissioner's deputies, or other persons appointed by the commissioner may disclose any information in the records of the division of financial services or acquired in the discharge of the person's duties that is available from the federal office of thrift supervision or its successors or the disclosure of which has been specifically authorized by the board of directors of the association to which such information relates. Nothing in this section shall be construed to authorize the board of directors of an association to waive any privileges that belong solely to the financial services board, the division of financial services, or its employees.

**Source:** L. 33: p. 336, § 6. CSA: C. 25, § 52. CRS 53: § 122-6-7. C.R.S. 1963: § 122-5-7. L. 79: Entire section amended, p. 432, § 9, effective June 19. L. 84: Entire section amended, p. 381, § 10, effective May 11. L. 85: Entire section amended, p. 400, § 3, effective May 24. L. 89: Entire section amended, p. 617, § 4, effective July 1. L. 93: Entire section amended, p. 1452, § 10, effective June 6. L. 99: Entire section amended, p. 1012, § 6, effective August 4. L. 2008: Entire section amended, p. 180, § 2, effective August 5.

#### **11-44-108. Seal of commissioner. (Repealed)**

**Source:** L. 33: p. 337, § 7. CSA: C. 25, § 53. CRS 53: § 122-6-8. C.R.S. 1963: § 122-5-8. L. 89: Entire section amended, p. 618, § 5, effective July 1. L. 94: Entire section repealed, p. 68, § 14, effective July 1.

**11-44-109. Examination by commissioner - procedure - penalty.** (1) The commissioner, in person or by his deputy or one or more of his or her employees, at such intervals as the commissioner shall determine to be necessary or desirable in order to ascertain that each association is conducting its business in a safe and authorized manner, shall visit the home office and such branch offices as the commissioner deems necessary and examine into the affairs of every domestic association doing business in this state. The commissioner's deputy or any employee of the commissioner, before being entitled to make such examination, shall produce under the hand and seal of the commissioner his or her authority to make such examination. The commissioner and his deputy have the power to administer oaths and to examine under oath any director, officer, employee, or agent of any association concerning the business and affairs thereof. If the association has neither been audited by a registered or certified public accountant, in such manner and by auditors satisfactory to the commissioner, within the twelve-month period immediately preceding the date of such examination or within the period that has elapsed since such last preceding examination, whichever is greater, nor adopted and maintained an internal audit program acceptable to the federal deposit insurance corporation or its successor and the division, the examination

by the division shall include an audit. The cost, as computed by the division, of any such audit shall be paid by the association audited; except that there shall be no charge by the division for making an audit when such audit has been made by reason of collaboration as provided in section 11-41-117.

(1.5) In lieu of making his or her own examination, the commissioner may accept the examination report prepared by the federal office of thrift supervision or its successor or other appropriate regulatory authority.

(2) When, in the judgment of the commissioner, the condition of any association renders it necessary or expedient to make an extra examination or to devote any such extraordinary attention to its affairs, the commissioner has authority to make any extra examinations and to devote any necessary extra attention to the conduct of its affairs and may cause a registered or certified public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs. In any such case, the association shall pay a reasonable fee based on actual cost to be affixed by the commissioner for all such extra services rendered by the division or by such accountant. A copy of the commissioner's report on each examination must be furnished to the association examined, and each director must note thereon that he has read the same.

(3) The commissioner or his deputy shall annually examine into the affairs of every foreign association doing business in this state, and for every such examination made outside this state a reasonable expense and the actual traveling expenses incurred shall be paid by the association so examined. If the commissioner deems it necessary, he may cause a public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs, and, in any such case, such association shall pay a reasonable price to be fixed by the commissioner for such extra services rendered by such accountant. Should any foreign association fail to pay the costs incurred in any such examination, such costs shall be paid by the state treasurer upon the order of the commissioner, and the amount so paid shall be a first lien upon all the assets and property of such association and may be recovered by suit by the attorney general on behalf of the state of Colorado and restored to the fund from which paid.

(4) For the purpose of the examinations provided for in this section, the commissioner and his deputy or any other person authorized by him to make the examination has free access to all books and papers of the association which relate to its business and to the books and papers kept by any officer, agent, or employee relating thereto or upon which any record of its business is kept and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to its affairs, transactions, and conditions. He may require and compel the production of records, books, papers, contracts, or other documents by court action if necessary.

(5) Any person who knowingly or willfully testifies falsely in reference to any matter material to said examination is guilty of perjury in the second degree and, upon conviction thereof, shall be punished accordingly; and any person who willfully refuses or fails to attend, answer, or produce books or papers, or who refuses to give said commissioner or his deputy or the person authorized by him full and truthful information and answer in writing to any inquiry or question made in writing by said commissioner or deputy or the person authorized by him in regard to the business carried on by such association or other matters under investigation, or who refuses or willfully fails to appear and testify under oath before the commissioner, his deputy, or the person authorized by him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

(6) Any director, officer, agent, or employee of any association who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or the papers of any association or upon any statement filed or offered to be filed in the division of financial services of this state or used in the course of any examination, inquiry, or investigation, with the intent to deceive the commissioner, his deputy, or any person employed or appointed by him to make such examination, inquiry, or investigation, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than



one thousand dollars, or by imprisonment in the county jail for not less than two months nor more than twelve months, or by both such fine and imprisonment.

**Source:** L. 33: p. 337, § 8. CSA: C. 25, § 54. L. 39: p. 250, § 22. CRS 53: § 122-6-9. L. 55: p. 765, § 1. L. 57: p. 650, § 2. C.R.S. 1963: § 122-5-9. L. 69: p. 1021, § 1. L. 71: p. 1147, § 5. L. 72: p. 567, § 44. L. 84: (1) amended and (1.5) added, p. 381, § 11, effective May 11. L. 89: (6) amended, p. 618, § 6, effective July 1. L. 2004: (1) and (1.5) amended, pp. 151, 140, §§ 60, 24, effective July 1.

**11-44-110. Power to take possession of association.** (1) If the commissioner, as the result of any examination or from any report made to him, finds that any association doing business in this state is violating the provisions of its articles of incorporation or bylaws or of the laws of this state provided for its government or is conducting its business in an unsafe or unauthorized manner, by an order addressed to such association, he may direct a discontinuance of such violations or unsafe or unauthorized practices and a conformity with all the requirements of law.

(2) If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that any association is in an unsafe condition or is conducting its business in an unsafe manner such as to render its further proceedings hazardous to the public or to any of its members, or if he finds that its assets are impaired to such an extent that it threatens loss to the withdrawable shares, or if any association refuses to submit its books, papers, and accounts to the inspection of the commissioner or any of his examiners, his deputy, or his assistants, or if any officer refuses to be examined upon oath concerning the affairs of such association, then the commissioner may revoke the certificate of authority of such association, which shall act as an injunction against the association issuing any new shares or stock, making any new loans, transferring any shares or stock, or making any change in its managerial or directorial personnel during the time such revocation is in effect.

(3) The commissioner may, with the written approval of the board, take possession of the property, business, and assets of such an association and retain such possession until such association, with the consent of the commissioner, resumes business or until its affairs are liquidated. Such association, with the consent of the commissioner, may resume business upon such conditions as may be prescribed by the commissioner, but such savings and loan association shall pay all the expenses of the commissioner and the commissioner's deputy and employees in so taking possession of its property and assets.

(4) (a) In addition to all other powers to take possession of any association, the commissioner may appoint himself or herself or a third party as conservator of any association and immediately take possession and control of the business and assets of the association if the commissioner determines that:

(I) Such action is necessary to conserve the assets of the association or to protect the interests of its shareholders from acts or omissions of the existing management;

(II) The association, by a resolution of its board of directors, consents to such action;

(III) There is a willful violation of a cease-and-desist order that results in the association being operated in an unsafe or unsound manner; or

(IV) The association is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.

(b) The commissioner may appoint a conservator and take immediate possession of the association without prior notice or a hearing; except that, within ten days after the conservator is appointed, the association may file an appeal with the board requesting the board to rescind the commissioner's appointment of a conservator. Upon receipt of a timely appeal, the board shall set a date for hearing and determine whether the commissioner's appointment should be rescinded; except that such appeal shall not act as a stay of the commissioner's action. If the board finds the commissioner's action was unauthorized, the board shall restore control of the association to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, all action taken by the commissioner shall be final.

(c) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to this subsection (4) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur only when specific concern arises about prompt withdrawal of moneys from the association.

(d) The conservator shall have all the powers of the shareholders, directors, and officers of the association and shall be authorized to operate the association in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the association and make regular reports to the commissioner until such time as the commissioner has determined that the purposes of conservatorship have been accomplished and the association should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the association. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the association in the manner described in subsections (2) and (3) of this section.

(e) If a conservator is appointed, and is other than the federal deposit insurance corporation, the office of thrift supervision or its successors, or an employee of the division of financial services, the conservator and any assistants shall provide a bond, payable to the association and executed by a surety company authorized to do business in this state, which meets with the approval of the financial services board, for the faithful discharge of their duties in connection with such conservatorship and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the association. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof. This requirement may be deemed met if the financial services board determines that the association's fidelity bond covers the conservator and any assistants.

**Source:** L. 33: p. 340, § 9. CSA: C. 25, § 55. CRS 53: § 122-6-10. C.R.S. 1963: § 122-5-10. L. 99: (3) amended and (4) added, p. 1012, § 7, effective August 4.

#### ANNOTATION

**The taking over of a building and loan association is free from constitutional objections,** for building and loan associations are

purely creatures of statute. United States Bldg. & Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

**11-44-110.5. Supervisory mergers.** As a condition to allowing an association to resume business, the commissioner may require the association to merge with a domestic, foreign, or federal savings and loan association. In the case of such a supervisory merger initiated by the commissioner or the federal deposit insurance corporation or its successor, the provisions of section 11-43-101 shall not apply.

**Source:** L. 82: Entire section added, p. 246, § 1, effective March 25. L. 2004: Entire section amended, p. 152, § 61, effective July 1.

**11-44-111. Appeal from commissioner's action.** When any association, of whose property, business, and assets the commissioner has taken possession, deems itself aggrieved thereby, it may appeal to the financial services board pursuant to section 11-44-101.8 and receive expedited consideration as soon as practicable, and if it has, within ten days after the commissioner took possession, served written notice on the commissioner of its intention to seek to enjoin in court the commissioner's further proceedings, it may apply at any time within thirty days after such taking possession to the district court of the county in which the principal office of the association is located to enjoin further proceedings. After citing the commissioner to show cause why further proceedings should not be enjoined and hearing the evidence of the parties and determining the facts, the court may, upon the merits, dismiss such application or enjoin the commissioner from further proceedings and direct the commissioner to surrender such business, property, and assets to such association. An



appeal from such judgment shall operate as a stay from the commissioner's taking possession, and no bond need be given if such appeal is taken by the commissioner; but, if such appeal is taken by such association, a bond shall be given as required by the court.

**Source:** L. 33: p. 341, § 10. CSA: C. 25, § 56. CRS 53: § 122-6-11. C.R.S. 1963: § 122-5-11. L. 93: Entire section amended, p. 1452, § 11, effective June 6.

#### ANNOTATION

**The parties have, under this section, a right to a plenary judicial review of the actions of the commissioner.** United States Bldg. & Loan

Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

**11-44-112. Appointment of commissioner as receiver - assignment for benefit of creditors prohibited.** Upon application to the district court, the commissioner may be appointed the receiver to operate a savings and loan association when such appointment is necessary to avoid the association's assets becoming impaired or when the association is operating in an unsafe manner. In lieu of the commissioner being appointed a receiver or liquidator, the federal deposit insurance corporation or its successor, or an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47.5 of this title, may be tendered an appointment as receiver or liquidator. For the purposes of rule 98 of the Colorado rules of civil procedure, venue of the commissioner is in the city and county of Denver. No savings and loan association shall make an assignment for the benefit of creditors.

**Source:** L. 33: p. 342, § 11. CSA: C. 25, § 57. CRS 53: § 122-6-12. C.R.S. 1963: § 122-5-12. L. 82: Entire section amended, p. 246, § 2, effective March 25. L. 84: Entire section amended, p. 382, § 12, effective May 11. L. 2004: Entire section amended, p. 152, § 62, effective July 1.

**11-44-113. Procedure under court order.** (1) The commissioner may retain possession of any savings and loan association for the purpose of liquidating its affairs, but before doing so he shall furnish a bond, executed by some surety company authorized to do business in this state and running to the people of the state of Colorado, in a penal sum equal to the value of the negotiable assets of the association, as nearly as may be determined, for the faithful discharge of his duties in connection with liquidating the affairs of the association and accounting for all moneys coming into his hands. Such bond shall be approved by the governor and be filed in the office of the secretary of state. The cost of such bond shall be paid from the assets of the association. Suits may be maintained on such bond by any person injured by a breach of the conditions thereof.

(2) Upon taking such possession, the commissioner shall have authority to collect all moneys due to such association, and to give full receipt therefor, and to do such other acts as are necessary or expedient to collect, conserve, or protect its business, property, and assets.

(3) If the commissioner is in possession of the business, property, and assets of any association, regardless of whether or not he is liquidating the affairs of such association, the commissioner, in his discretion, may apply to the district court of the county in which the principal office in this state of such association is located for an order confirming any action taken by the commissioner or authorizing the commissioner to do any act or to execute any instrument not expressly authorized by articles 40 to 46 of this title, which order shall be made after a hearing, on such notice as the court shall prescribe. He may pay and discharge any secured claims against such association, and, within six months after taking such possession, he may disaffirm any executory contracts, including leases, to which such association is a party and disaffirm any partially executed contracts, including leases, to the extent that they remain executory.

**Source:** L. 33: p. 342, § 12. CSA: C. 25, § 58. CRS 53: § 122-6-13. C.R.S. 1963: § 122-5-13.

**11-44-114. Noncompliance with orders - penalty.** If the commissioner demands possession of the property, business, and assets of any association, pursuant to section 11-44-110, the refusal of any officer, agent, employee, or director of such association to comply with such demand shall constitute a misdemeanor, punishable by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and, if such demand is not complied with within twenty-four hours after service, the commissioner may call to his assistance the sheriff of the county in which the principal place of business of such association is located, by written demand under his hand and official seal; whereupon it shall become the duty of such official to enforce the demands of the commissioner.

**Source:** L. 33: p. 343, § 13. CSA: C. 25, § 59. CRS 53: § 122-6-14. C.R.S. 1963: § 122-5-14.

**11-44-115. Officers to furnish schedule of property.** Upon taking possession of the property, business, and assets of any association, the commissioner shall require the president and secretary of such association to make a schedule of all its property and assets and of all collateral held by it as security for loans, and to make oath that such schedule sets forth all such property, assets, and collateral which such association owns or to which it is entitled, and to deliver such schedule and the possession of all such property and collateral as may not have been so previously delivered to the commissioner, who may examine under oath such president and secretary, the other officers of such association, or the directors, agents, or employees thereof at any time to determine whether or not all the property, assets, and collateral which such association owns or to which it is entitled have been transferred and delivered into his possession.

**Source:** L. 33: p. 344, § 14. CSA: C. 25, § 60. CRS 53: § 122-6-15. C.R.S. 1963: § 122-5-15.

**11-44-116. Liquidation powers of commissioner.** (1) In liquidating the affairs of an association, the commissioner has the power to collect all moneys due to and all claims of such association and give full receipt therefor; to release or reconvey all real or personal property pledged, hypothecated, or transferred in trust as security for loans; to approve and pay all just and equitable claims; to commence and prosecute all actions and proceedings necessary to enforce liquidations; to compound bad or doubtful debts and to compound and settle with any debtor or creditor of such association or with the persons having possession of its property or being in any way responsible at law or in equity to such association, upon such terms and conditions and in such manner as he deems just and beneficial to such association; in case of mutual dealings between the association and any person, to allow just setoffs in favor of such persons in all cases in which the same ought to be allowed according to law and equity; in case of borrowers holding shares of the association pledged to the association as security for said loan, to allow the amount paid in on said shares, together with all dividends legally declared thereon, to be set off against the amount due on said loan; and to sell, convey, and transfer real and personal property.

(2) If a purchaser for any bad or doubtful debts cannot be obtained and it appears improbable that recovery thereon can be had and that the costs of actions to enforce collections of the same would probably be lost, the court may direct that suits thereon need not be brought.

(3) For the purpose of executing and performing any of the powers and duties conferred upon him, the commissioner, in the name of such association or in his own name, may prosecute and defend any and all suits and other legal proceedings and, in the name of such association or in his own name, as commissioner, may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or other transaction in connection with the liquidation of such association. Any deed, assignment, release, or other instrument executed pursuant



to the authority given shall be valid and effectual for all purposes as though the same had been executed by the officers of such association by authority of its board of directors.

(4) In case any of the real property so sold is located in a county other than the county in which the application to the court for leave to sell the same is made, the commissioner shall cause a certified copy of the order authorizing or ratifying such sale to be filed in the office of the recorder of the county in which such real property is located.

(5) Upon determining to liquidate an association, the commissioner shall cause an inventory of all the assets of such association to be made in duplicate, the original to be filed with the court and the duplicate in the office of the commissioner. He shall cause due notice to be given, by publication once a week for four successive weeks in some newspaper of general circulation published at or near the principal place of business of such association in this state, to all persons having claims against it as creditors, or investors, or otherwise, to present and file same and make legal proof thereof at a place and within a time to be designated in such publication, which time shall be not less than two months after such first publication. Within ten days after such first publication, he shall cause a copy of such notice to be mailed to all persons whose names appear of record upon its books as creditors or investors, and, upon the expiration of the time fixed for the presentation of claims, the commissioner shall prepare or cause to be prepared in duplicate a full and complete schedule of all claims presented, specifying by classes those that have been approved and those that have been disapproved, and shall file the original with the court and the duplicate in the office of the commissioner. Not later than five days after the time of filing such schedule with the court, written notice shall be mailed to all claimants whose claims have been rejected.

(6) Action to enforce the payment of any rejected claim must be brought and service had within four months after the date of filing of the schedule of claims with the proper court; otherwise all such actions shall be forever barred. All claims of creditors, investors, or other persons against the association or against any property owned or held by it must be presented to the commissioner in writing, verified by the claimant or someone in his behalf, within the period limited in the notice mentioned in subsection (5) of this section for the presentation of claims; and any claims not so presented shall be forever barred; but the claim of any investor, appearing upon the books of the association as a valid claim, presented after the expiration of the time fixed in said notice shall be entitled to share in any dividends declared subsequent to the presentation of such claim.

(7) The commissioner under his hand and official seal may appoint one or more special deputies to assist in the duties of liquidation and distribution under his direction and may also employ such special legal counsel, accountants, and assistants as may be needful and requisite and fix the salaries and compensation to be allowed and paid to each, all to be in a reasonable and commensurate sum. All such salaries and compensation and such other reasonable and necessary expenses as may be incurred in the liquidation shall be paid by the commissioner from the funds of such association in his hands.

(8) From the net realization of such assets in excess of such salaries, compensation, and expenses, the commissioner shall first pay all approved claims other than to investors, and thereafter he shall distribute and pay dividends in liquidation to the shareholders and investors in the association, other than holders of permanent stock, until their claims are fully paid or such assets or funds are exhausted. Such distributions shall be made as funds are available therefor, to the extent of ten percent or more of the approved claims of the class of claimants then entitled to distribution, and shall continue until all the assets have been realized upon and a final dividend in liquidation is declared and paid.

(9) Upon the payment of a final dividend in liquidation, the commissioner shall prepare and file with the court a full and final statement of the liquidation, including a summary of the receipts and disbursements, and a duplicate thereof shall be filed in the office of the commissioner, and, after due hearing and approval by the court, the liquidation shall be deemed to be closed.

(10) The determination by the commissioner to liquidate any association, evidenced by filing written notice of such determination with the court, shall operate to stay or dissolve any actions or attachments instituted or levied within thirty days next preceding the taking of possession of such association by the commissioner, and, pending the process of

liquidation, no attachment or execution shall be levied nor lien created upon any of the property of such association.

(11) Whenever, in case of any association which has issued permanent stock, the commissioner has fully liquidated all claims other than claims of such stockholders, and has made due provision for any and all known or unclaimed liabilities, excepting claims of permanent stockholders, and has paid all expenses of liquidation, he shall call a meeting of the stockholders of said savings and loan association by giving notice thereof for thirty days in one or more newspapers published in the county in which the principal office of the association is located. At such meeting the commissioner shall deliver to such stockholders all the property and effects of said association remaining in his possession, except its records, which shall be retained by him as part of the records of his office, and, upon such transfer and delivery, he shall be discharged from any and all further liability to said association or its creditors, and thereupon the association shall be in the same position as though it had never been authorized to transact a savings and loan business.

**Source:** L. 33: p. 344, § 15. CSA: C. 25, § 61. CRS 53: § 122-6-16. C.R.S. 1963: § 122-5-16.

**11-44-117. Setoffs.** Credits on loan shares of all persons indebted to any savings and loan association in the possession of the commissioner, whether such indebtedness is due or to become due, shall be applied by him on account of such indebtedness.

**Source:** L. 33: p. 349, § 16. CSA: C. 25, § 62. CRS 53: § 122-6-17. C.R.S. 1963: § 122-5-17.

**11-44-118. Commissioner and deputy not to accept gifts.** Neither the commissioner nor his deputy shall receive or accept any bribe, gratuity, or reward from any person or association for any purpose whatever or knowingly and willfully make any false or fraudulent report of the condition of any association for any purpose whatsoever. One or more of the directors of any association may be present at any examination of the affairs thereof, but the absence of any or all of the officers or directors shall not operate to prevent the commissioner or his deputy from proceeding with such examination.

**Source:** L. 33: p. 349, § 17. CSA: C. 25, § 63. CRS 53: § 122-6-18. C.R.S. 1963: § 122-5-18.

**11-44-119. Association's right to resort to court.** Nothing in articles 40 to 46 of this title shall be construed to prevent an association or person affected by any order, ruling, proceeding, act, or action of the commissioner or the financial services board or any person acting on behalf and at the instance of the commissioner or the financial services board, or both, from testing the validity of the same in any court of competent jurisdiction, through injunction, appeal, or other proper process or proceeding, mandatory or otherwise.

**Source:** L. 33: p. 350, § 18. CSA: C. 25, § 64. CRS 53: § 122-6-19. C.R.S. 1963: § 122-5-19. L. 93: Entire section amended, p. 1453, § 12, effective June 6.

#### ANNOTATION

**Section helps insure speedy judicial hearing.** This section, together with §§ 11-41-111, 11-41-113, and 11-41-116, supplies all reasonably proper means of obtaining speedy judicial hearings on all vital issues that could properly be raised. United States Bldg. & Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

**For the parties have, under this section, a right to a plenary judicial review** of the actions of the commissioner. United States Bldg. & Loan Ass'n v. McClelland, 6 F. Supp 299 (D. Colo. 1934).



**11-44-120. Records of commissioner.** (1) The commissioner shall maintain annually revised summaries disclosing the names of the officers and directors of all savings and loan associations doing business in the state of Colorado during the preceding year, the financial condition of such savings and loan associations, together with a statement of the assets, liabilities, and reserves of the associations, and such other information concerning the same as he may see fit.

(2) These data and any other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(3) Repealed.

**Source:** L. 33: p. 350, § 19. CSA: C. 25, § 65. L. 39: p. 251, § 23. CRS 53: § 122-6-20. L. 64: p. 169, § 133. C.R.S. 1963: § 122-5-20. L. 83: (2) and (3) amended, p. 827, § 9, effective July 1. L. 96: (3) repealed, p. 1231, § 55, effective August 7.

**Cross references:** For the legislative declaration contained in the 1996 act repealing subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

**11-44-121. Commissioner may destroy records. (Repealed)**

**Source:** L. 55: p. 764, § 11. CRS 53: § 122-6-21. C.R.S. 1963: § 122-5-21. L. 2004: Entire section repealed, p. 140, § 25, effective July 1.

**11-44-122. Waiver of membership or stockholder voting.** Notwithstanding any other provision of state law, whenever the commissioner finds that it is necessary to effect a merger, consolidation, purchase and assumption agreement, conversion to stock association, conversion to mutual association, conversion to federal association, or conversion to state association or other action, as a result of the assets of any association being impaired to the extent that it threatens loss to the withdrawable shares or the association being in an unsafe condition and the time required to give proper notice and hold a meeting to vote on the action is deemed by the commissioner to increase the threat of loss to the withdrawable shares, the commissioner may waive the requirement of a membership or stockholder vote on the action. There shall be no requirement of prior written notice to the affected parties of said waiver.

**Source:** L. 82: Entire section added, p. 247, § 3, effective March 25.

**11-44-123. Assessment of civil money penalties.** (1) (a) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the commissioner may assess and collect a civil money penalty from any person who has violated any final order issued by the commissioner pursuant to section 11-44-110 (1) or any suspension or removal order issued pursuant to section 11-44-106.5, or who has violated section 11-41-133.

(b) For the purposes of this section, a violation includes, but is not limited to, any action, by any person alone or with another person, which causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(c) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty may be appealed to the financial services board pursuant to section 11-44-101.8. On appeal, the board may

consider, among other matters, whether the civil money penalty assessed by the commissioner is appropriate considering the financial resources of the person assessed.

(3) In determining the amount of the civil money penalty to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, and such other matters as the commissioner may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed is determined by the commissioner to be in violation of a cease-and-desist order or an order of suspension or removal. Alternatively, the commissioner may assess a civil money penalty for such violation in a lump-sum amount not to exceed fifty thousand dollars.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the commissioner; except that the commissioner, in the commissioner's discretion, may compromise, modify, or set aside any civil money penalty. If any person fails to pay an assessment after it has become due and payable, the commissioner may refer the matter to the attorney general, who shall recover the amount assessed by action in the district court for the city and county of Denver. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

**Source:** **L. 89:** Entire section added, p. 612, § 8, effective April 19. **L. 93:** (2) amended, p. 1453, § 13, effective June 6. **L. 99:** Entire section amended, p. 1014, § 8, effective August 4.

## ARTICLE 45

### Conversion

11-45-101.	Conversion into federal association.	11-45-103.	Conversion into state association.
11-45-102.	Effect of conversion.		

**11-45-101. Conversion into federal association.** (1) Any savings and loan association or other home-financing organization, by whatever name or style it may be designated, which is eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by the following procedure:

(a) At any regular or special meeting of the shareholders of any such association called to consider such action and held in accordance with the laws governing such association, such shareholders, by an affirmative vote of the shareholders owning and voting the number of shares required for authorization of the sale of the association's assets or required to accomplish a consolidation or a merger, whichever is the greater, present in person or by proxy, may declare by resolution the determination to convert said association into a federal savings and loan association.

(b) A copy of the minutes of such meeting of the shareholders, verified by the affidavit of the president or vice-president and the secretary of the meeting, shall be filed within ten days after said meeting in the office or division of this state having supervision of such association. Such verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(c) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, the association shall take such action as may be necessary to make it a federal savings and loan association, and, within ten days after receipt of the federal charter, there shall be filed in the office or division of this state having supervision of such association a copy of said charter issued to such association by the office of thrift supervision or its successor or a certificate showing the organization of such association as a federal savings and loan association certified by, or on behalf of, the office of thrift supervision or its successor. Upon the filing of such instrument, such association shall cease to be a state association and shall thereafter be a federal savings and loan association.



**Source:** L. 35: p. 263, § 1. **CSA:** C. 25, § 67. **CRS 53:** § 122-7-1. **C.R.S. 1963:** § 122-6-1. **L. 2004:** (1)(c) amended, p. 140, § 26, effective July 1.

**11-45-102. Effect of conversion.** At the time when such conversion becomes effective, such association shall cease to be supervised by this state, and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character, whether real, personal, or mixed, immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, shall continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction; and said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by it as a state association, and said federal savings and loan association, at the time of the taking effect of such conversion, shall continue to be responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place. It is expressly declared that such federal savings and loan association shall be merely a continuation of the state association under a new name, a new jurisdiction, and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

**Source:** L. 35: p. 265, § 2. **CSA:** C. 25, § 68. **CRS 53:** § 122-7-2. **C.R.S. 1963:** § 122-6-2.

**11-45-103. Conversion into state association.** (1) Any federal savings and loan association may convert itself into an association under articles 40 to 46 of this title by the majority vote of all members present in person or by proxy at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of such meeting of members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the commissioner and mailed to the office of thrift supervision, or its successor, within ten days after such meeting. Such verified copies of the proceedings of the meeting when so filed shall be prima facie evidence of the holding and action of such meeting.

(2) At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors shall then execute two copies of the certificate of incorporation and four copies of the bylaws. The directors chosen for the association shall all sign and acknowledge the certificate of incorporation as subscribers thereto and the bylaws as incorporators of the association. The commissioner may provide, by regulation, for the procedure to be followed by any such federal savings and loan association converting into an association under articles 40 to 46 of this title. The state-chartered association shall be a continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

**Source:** L. 39: p. 251, § 24. **CSA:** C. 25, § 68(1). **CRS 53:** § 122-7-3. **C.R.S. 1963:** § 122-6-3. **L. 2004:** (1) amended, p. 140, § 27, effective July 1.

ARTICLE 46

Safe Deposit Facilities

11-46-101.	Definitions.		incompetence.
11-46-102.	Safe deposit boxes.	11-46-107.	Search procedure on death.
11-46-103.	Lease to natural persons.	11-46-108.	Adverse claims to contents of
11-46-104.	Leases to joint tenants.		safe deposit box.
11-46-105.	Access by fiduciaries.	11-46-109.	Nonpayment of rent.
11-46-106.	Effect of lessee's death or		

**11-46-101. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Fiduciary" means any person as defined in section 15-1-103 (2), C.R.S.
- (2) "Lease" means the contract between lessor and lessee governing the use, payment, and other terms and conditions with regard to a safe deposit box.
- (3) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.
- (4) "Lessor" means any association defined in section 11-46-102 which maintains safe deposit facilities.
- (5) "Person" means any natural person, partnership, whether limited or general, corporation, or entity leasing a safe deposit box.
- (6) "Safe deposit box" means any vault, box, receptacle, or other safekeeping facility maintained by a lessor for lease to third persons.

**Source:** L. 59: p. 664, § 7. CRS 53: § 122-8-2. C.R.S. 1963: § 122-7-2.

**11-46-102. Safe deposit boxes.** Any savings and loan associations organized under articles 40 to 46 of this title and any federal savings and loan associations organized under the "Home Owners' Loan Act of 1933", as amended, except to the extent that laws, rules, and regulations under which they operate are inconsistent with this article, may engage in the business of leasing safe deposit boxes in accordance with the provisions of this article.

**Source:** L. 59: p. 664, § 7. CRS 53: § 122-8-1. C.R.S. 1963: § 122-7-1.

**Cross references:** For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

**11-46-103. Lease to natural persons.** A lessor may lease a safe deposit box to any natural person and, in connection therewith, deal with such person without liability until there is filed with such lessor a certified copy of any order of a Colorado court indicating that such person is under a legal disability and directing the lessor to deal with such person's fiduciary.

**Source:** L. 59: p. 665, § 7. CRS 53: § 122-8-5. C.R.S. 1963: § 122-7-5.

**11-46-104. Leases to joint tenants.** (1) Any lessor may lease a safe deposit box to one or more natural persons as joint tenants, and any one of such joint tenants shall have the right of access to such safe deposit box.

(2) Upon the death of any joint tenant, the provisions of section 15-10-111, C.R.S., and of this section with regard to examination shall apply.

(3) Nothing in this section shall be construed to prevent the making of leases for safe deposit boxes, the terms of which may require the signature and presence of more than one person as a condition for access to said box.

**Source:** L. 59: p. 665, § 7. CRS 53: § 122-8-6. C.R.S. 1963: § 122-7-6. L. 73: p. 1650, § 15. L. 81: (2) amended, p. 1883, § 1, effective May 27. L. 2002: (2) amended, p. 1360, § 8, effective July 1.

**11-46-105. Access by fiduciaries.** (1) Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the instrument of authority pursuant to which such fiduciaries are acting and copies of which have been furnished the lessor, allow access thereto as follows:

- (a) By any one or more of the persons acting as executors or administrators;
- (b) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing and signed by all other persons so acting;
- (c) By any agent authorized in writing and signed by all of the persons acting as fiduciaries.



**Source:** L. 59: p. 665, § 7. CRS 53: § 122-8-3. C.R.S. 1963: § 122-7-3.

**11-46-106. Effect of lessee's death or incompetence.** Where a lessor, without written notice or actual knowledge of the death or of a determination of legal incompetence of the lessee, deals with said lessee or his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessor and the estate of the lessee.

**Source:** L. 59: p. 665, § 7. CRS 53: § 122-8-4. C.R.S. 1963: § 122-7-4. L. 75: Entire section amended, p. 922, § 8, effective July 1; entire section amended, p. 207, § 9, effective July 16.

**Editor's note:** Amendments to this section by Senate Bill 75-135 and Senate Bill 75-453 were harmonized.

**11-46-107. Search procedure on death.** The provisions of section 15-10-111, C.R.S., shall apply to the search procedure of a safe deposit box on the death of a lessee.

**Source:** L. 59: p. 666, § 7. CRS 53: § 122-8-7. C.R.S. 1963: § 122-7-7. L. 73: p. 1650, § 16.

**11-46-108. Adverse claims to contents of safe deposit box.** (1) A lessor shall not deny access to a safe deposit box to its lessee unless the claim of said lessee is adverse within the terms of this section. A claim shall be considered adverse when:

(a) The lessor is directed to deny such access by a court order issued in an action in which the lessee is served with process and named as a party by a name which identified him with the name in which the safe deposit box is leased; or

(b) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity for a named beneficiary and the adverse claim is supported by a sworn written statement of facts disclosing that it is made by or on behalf of such a beneficiary and that there is reason to know that the fiduciary may misappropriate the trust property; or

(c) One of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or when one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or when it is claimed that a lessee is the same person as one using another name.

**Source:** L. 59: p. 666, § 7. CRS 53: § 122-8-8. C.R.S. 1963: § 122-7-8.

**11-46-109. Nonpayment of rent.** If the rental on a safe deposit box has not been paid for one year after it is due, the lessor may petition a court of competent jurisdiction to make disposition of the contents of such safe deposit box, and the lessor shall have the right to claim and accept any proceeds from such disposition to satisfy accumulated charges, court costs, and attorneys' fees in connection with the rental and disposition of said safe deposit box.

**Source:** L. 59: p. 667, § 7. CRS 53: § 122-8-9. C.R.S. 1963: § 122-7-9.

## ARTICLE 47

### Protection of Deposits of Public Moneys

11-47-101.	Short title.	11-47-105.	services board.
11-47-102.	Legislative declaration.		Acceptance of provisions -
11-47-103.	Definitions.		designation as eligible public
11-47-104.	Administration - powers of		depository.
	commissioner and financial	11-47-106.	Minimum amount of eligible

	collateral required to be maintained as security for public deposits. (Repealed)	11-47-114.	Assessments made - exceptions. (Repealed)
11-47-107.	Eligible collateral - when required to be maintained. (Repealed)	11-47-115.	When assessments payable - procedure if not paid. (Repealed)
11-47-108.	Method of securing public deposits.	11-47-116.	Disposition of assessments - subrogation of claims - expenses. (Repealed)
11-47-109.	Where collateral held - right of substitution - income derived.	11-47-117.	No impairment of obligations. (Repealed)
11-47-110.	Subsequent elections upon approval of commissioner. (Repealed)	11-47-118.	Public moneys to be deposited only in eligible public depositories - penalty for violation.
11-47-111.	Reports required - when filed - contents.	11-47-119.	Liability of officials of governmental units.
11-47-112.	Power and authority of financial services board.	11-47-120.	Authority to accept deposits - acceptance of insured deposits.
11-47-113.	Procedure when event of default occurs.		

**11-47-101. Short title.** This article shall be known and may be cited as the “Savings and Loan Association Public Deposit Protection Act”.

**Source: L. 75:** Entire article added, p. 399, § 1, effective July 1.

**11-47-102. Legislative declaration.** (1) The general assembly declares that the purpose of this article is to provide protection of public moneys on deposit in state-chartered and federally chartered savings and loan associations in this state above and beyond the protection provided by the federal deposit insurance corporation or its successor and to ensure prompt payment of deposit liabilities to governmental units in the event of default or insolvency of any such association.

(2) The general assembly further declares that the inclusion of self-insurance pools formed by governmental units within the scope of the provisions of this article is to clarify that such self-insurance pools have been and shall continue to be entitled to protection as provided by the provisions of this article.

**Source: L. 75:** Entire article added, p. 399, § 1, effective July 1. **L. 88:** Entire section amended, p. 428, § 6, effective April 20. **L. 2004:** (1) amended, p. 141, § 28, effective July 1.

**11-47-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Affected governmental unit” means any governmental unit whose deposits of public moneys are affected by an event of default.

(2) “Capital funds” means, with respect to any eligible public depository, the aggregate sum of its capital stock, surplus, and undivided profits and of all reserves required by any law or regulation, together with the amount of any debt subordinated to deposit liabilities when such debt has been allowed to be included in its stated capital position by the applicable regulatory authority.

(3) “Commissioner” means the state commissioner of financial services.

(4) “Defaulting depository” means an eligible public depository to which an event of default has occurred.

(5) “Eligible collateral” means:

(a) Obligations of the United States or of any agency thereof;

(b) Obligations wholly or partially guaranteed or insured as to payment of principal by the United States or any agency thereof;

(c) Obligations of the state of Colorado, including anticipation warrants, and general obligations of any governmental unit of this state, including obligations the interest and



principal of which are secured by deposit in escrow of an amount of obligations of the United States or any agency thereof sufficient to secure such payment;

(d) Obligations evidenced by notes secured by first lien mortgages or deeds of trust on real property, whether or not situate in this state, if such obligations are not for construction or land acquisition and development and if such obligations shall not exceed one hundred percent of the value of all eligible collateral on pledge, which obligations shall not be in default in any respect and are wholly owned by the eligible depository;

(e) Revenue bonds, except industrial development revenue bonds, issued by the state of Colorado or any agency thereof, or by any county, city and county, municipality, school district, special district, or other authority within this state, as well as special improvement district bonds issued by any such political subdivision or authority;

(f) Mortgage-backed securities issued by the federal home loan mortgage corporation, the federal national mortgage association, or the government national mortgage association and such other mortgage-backed securities as are approved by the commissioner;

(g) Such liquid assets, as such term is defined in the federal regulations governing members of a federal home loan bank, as are approved by the commissioner;

(h) Irrevocable and unconditional standby letters of credit issued by a federal home loan bank if:

(I) The letter of credit is in the standard format approved by the Colorado division of financial services;

(II) The Colorado division of financial services is designated as the beneficiary of the letter of credit; and

(III) Securities issued by the federal home loan bank remain triple A-rated by one or more nationally recognized organizations which regularly rate such obligations.

(6) "Eligible public depository" means any state-chartered savings and loan association or any federally chartered savings and loan association having an office in this state which is authorized by the laws of the United States to accept deposit accounts, which deposits are insured by the federal deposit insurance corporation or its successor, and which depository has been designated as an eligible public depository by the commissioner.

(7) "Event of default" means the issuance of an order by a supervisory authority or a receiver restraining an eligible public depository from making payments of its deposit liabilities.

(8) "Governmental unit" means the state of Colorado, every municipality, city and county, county, school district, special district, and authority located in this state, every public body corporate created or established under the constitution or any law of this state, and every board, commission, department, institution, agency of, and every entity created by intergovernmental agreement among, any of the foregoing which collects, receives, or has custody of or control over public moneys.

(8.5) (a) "Market value" means, for eligible collateral consisting of obligations wholly or partially guaranteed or insured as to payment of principal by the United States or any agency thereof, or other obligations evidenced by notes secured by first lien mortgages or deeds of trust, the lower of current market quotation or seventy-five percent of the unpaid principal of the note evidencing the obligation.

(b) For all other eligible collateral, "market value" means the current market quotation.

(9) (Deleted by amendment, L. 2004, p. 141, § 29, effective July 1, 2004.)

(10) "Net deposit liability" means, with respect to a defaulting depository, the amount of its deposit liability to a governmental unit after deduction of any applicable federal deposit insurance corporation or its successor insurance with respect thereto.

(11) "Public deposits" means and includes all public moneys on deposit in an eligible public depository, whether payable on demand or at a certain time.

(12) "Public moneys" means all moneys under the control of or in the custody of governmental units.

(13) "Valuation date" means the last business day of either March or September of each year, as the occasion may require.

**Source:** L. 75: Entire article added, p. 399, § 1, effective July 1. L. 76: (9) amended, p. 300, § 22, effective May 20. L. 77: (5)(d) and (5)(e) amended, p. 574, § 1, effective

June 10. **L. 79:** (5)(b) and (5)(d) amended and (8.5) added, p. 1614, § 3, effective June 8. **L. 81:** (5)(d) amended, p. 620, § 3, effective April 30. **L. 83:** (8.5)(a) amended, p. 487, § 2, effective May 10. **L. 85:** (5)(d) and (5)(e) amended and (5)(f) and (5)(g) added, p. 401, § 1, effective May 31. **L. 88:** (8) amended, p. 429, § 7, effective April 20. **L. 89:** (3) amended, p. 621, § 14, effective July 1. **L. 94:** (6) amended, p. 68, § 15, effective July 1. **L. 97:** (5)(h) added, p. 159, § 1, effective March 28. **L. 2004:** (9) and (10) amended, p. 141, § 29, effective July 1.

**11-47-104. Administration - powers of commissioner and financial services board.**

The provisions of this article shall be administered by the commissioner under the supervision of the financial services board. The financial services board and the commissioner shall have the authority to do all acts necessary and required to carry out the purpose of this article. To this end, the financial services board is empowered to make, amend, and rescind rules and regulations consistent with said provisions and to prescribe a standard form for the statements and reports required to be made or filed by eligible public depositories and to require uniform use of the same. Acts of the commissioner are subject to appeal to the financial services board pursuant to section 11-44-101.8.

**Source:** **L. 75:** Entire article added, p. 401, § 1, effective July 1. **L. 93:** Entire section amended, p. 1453, § 14, effective June 6.

**11-47-105. Acceptance of provisions - designation as eligible public depository.**

(1) Every state-chartered savings and loan association and every federally chartered savings and loan association having an office in this state that is otherwise eligible to be an eligible public depository and that desires to accept and hold public deposits in an amount in excess of the amount insured by the federal deposit insurance corporation or its successor shall file with the commissioner, on a form provided by him or her for such purpose, a statement signed and sworn to by an executive officer of such association electing to accept and become subject to the provisions of this article and setting forth the amount of its capital funds and the aggregate amount and nature of all public deposits held by it. Upon the filing of such statement and acceptance, the commissioner shall forthwith designate such savings and loan association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.

(2) (Deleted by amendment, L. 2004, p. 141, § 30, effective July 1, 2004.)

**Source:** **L. 75:** Entire article added, p. 401, § 1, effective July 1. **L. 94:** Entire section amended, p. 68, § 16, effective July 1. **L. 2004:** Entire section amended, p. 141, § 30, effective July 1.

**11-47-106. Minimum amount of eligible collateral required to be maintained as security for public deposits. (Repealed)**

**Source:** **L. 75:** Entire article added, p. 401, § 1, effective July 1. **L. 93:** (3) amended, p. 1453, § 15, effective June 6. **L. 2004:** Entire section repealed, p. 142, § 31, effective July 1.

**11-47-107. Eligible collateral - when required to be maintained. (Repealed)**

**Source:** **L. 75:** Entire article added, p. 402, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 142, § 32, effective July 1.

**11-47-108. Method of securing public deposits.** (1) Except as provided in section 11-47-112 (6) (a), any eligible public depository shall secure public deposits accepted and held by it by pledging eligible collateral having a market value, at all times, equal to at least



one hundred percent of the aggregate of said deposits not insured by the federal deposit insurance corporation or its successor.

(2) The eligible collateral pledged shall be held as specified in section 11-47-109; except that the depository shall be required to furnish each governmental unit whose deposit is so secured with a statement, signed under oath by an executive officer of said depository, certifying to said governmental unit that its deposit is secured in the manner specified in subsection (1) of this section and specifying where the collateral pledged is being held in custody.

**Source:** L. 75: Entire article added, p. 402, § 1, effective July 1. L. 87: (1) amended, p. 469, § 2, effective May 1. L. 2004: Entire section amended, p. 143, § 33, effective July 1.

**11-47-109. Where collateral held - right of substitution - income derived.** (1) The eligible collateral required to be pledged as provided in section 11-47-108 shall be held in escrow by another savings and loan association in Colorado, by a state or national bank in Colorado, or by any federal home loan bank or branch thereof or any federal reserve bank or branch thereof approved by the commissioner, and held in such manner as the financial services board shall prescribe by rule. All collateral so held shall be clearly identified as being security maintained or pledged for the aggregate amount of public deposits accepted and held on deposit by said eligible public depository.

(2) Said depository shall have the right at any time to make substitutions of eligible collateral maintained or pledged and shall at all times be entitled to collect and retain all income derived from the same without restriction.

**Source:** L. 75: Entire article added, p. 403, § 1, effective July 1. L. 77: (1) amended, p. 574, § 2, effective June 10. L. 86: (1) amended, p. 603, § 1, effective March 10. L. 89: (1) amended, p. 613, § 9, effective April 19. L. 93: (1) amended, p. 1454, § 16, effective June 6. L. 2004: (1) amended, p. 143, § 34, effective July 1.

**11-47-110. Subsequent elections upon approval of commissioner. (Repealed)**

**Source:** L. 75: Entire article added, p. 403, § 1, effective July 1. L. 2004: Entire section repealed, p. 143, § 35, effective July 1.

**11-47-111. Reports required - when filed - contents.** On a date specified by the commissioner, every eligible public depository shall file a report with the commissioner that contains such information as required by the commissioner. The commissioner may require more frequent reports from eligible public depositories.

**Source:** L. 75: Entire article added, p. 403, § 1, effective July 1. L. 83: Entire section amended, p. 488, § 3, effective May 10. L. 94: Entire section amended, p. 69, § 17, effective July 1. L. 2000: Entire section amended, p. 156, § 3, effective August 2.

**11-47-112. Power and authority of financial services board.** (1) The commissioner shall have specific power and authority to require any eligible public depository to furnish, at any time, such information as the commissioner may request or demand concerning the amount of public deposits held by it, the portion thereof that is insured by the federal deposit insurance corporation or its successor, the amount of its capital funds, and the nature, amount, market value, and location of the eligible collateral maintained or pledged by it to secure said deposits.

(2) If any such depository shall fail or refuse to furnish the information requested or demanded within ten days after the date of the request or demand, the commissioner shall have the authority to forthwith deny it the right to accept and hold any additional public deposits until such time as said information is furnished to him and he has acknowledged receipt thereof, and, at his discretion, he may make public announcement of such denial.

(3) The commissioner shall have the authority to determine and fix the date upon which any event of default is deemed to have occurred, after taking into account and giving due consideration to any rule, regulation, or lawful order of any supervisory authority as the same may affect the inability or failure of an eligible public depository to repay deposit liabilities.

(4) The commissioner shall have the authority to require any eligible public depository to substitute new eligible collateral for any of its maintained or pledged collateral which he deems to be ineligible.

(5) If any depository violates any regulation promulgated by the commissioner pursuant to section 11-47-104 or violates any provision of this article, the commissioner shall have the authority to deny, forthwith, the right of said depository to accept and hold any additional public deposits until such time as the depository complies with the regulations or the provisions of this article. The commissioner, at his discretion, may make public announcement of such denial.

(6) (a) The financial services board may promulgate rules to require an eligible public depository to reduce or eliminate its uninsured public deposit liability if said depository's regulatory capital does not comply with the minimum requirement of the federal deposit insurance corporation or its successor. Notwithstanding any other provision in this article to the contrary, the financial services board also may promulgate rules to require a depository to pledge eligible collateral having a market value in excess of one hundred percent of the aggregate amount of public deposits not insured by the federal deposit insurance corporation or its successor, if said depository's regulatory capital does not comply with the minimum requirement of the federal deposit insurance corporation or its successor. Notwithstanding any other provision in this article to the contrary, the financial services board may promulgate rules to require an eligible public depository to pledge a minimum amount of eligible collateral.

(b) Repealed.

**Source:** **L. 75:** Entire article added, p. 403, § 1, effective July 1. **L. 85:** (4) added, p. 402, § 2, effective May 31. **L. 87:** (5) and (6) added, p. 469, § 3, effective May 1. **L. 89:** (6)(a) amended and (6)(b) repealed, pp. 614, 615, §§ 10, 13, effective April 19. **L. 93:** (6) amended, p. 1454, § 17, effective June 6. **L. 2004:** (1) and (6)(a) amended, pp. 152, 144, §§ 63, 36, effective July 1.

**11-47-113. Procedure when event of default occurs.** (1) When the commissioner has determined that an event of default has occurred with respect to any eligible public depository and has determined and fixed the date of such occurrence, he or she shall proceed in the following manner:

(a) He shall forthwith seize and take possession of all eligible collateral, maintained or pledged, belonging to the defaulting depository, wherever held in custody.

(b) Within twenty days after seizing and taking possession of all eligible collateral pursuant to paragraph (a) of this subsection (1), the commissioner shall ascertain the aggregate amount of public deposits held by the defaulting depository, as disclosed by the records of such depository, and the portion thereof that is insured by the federal deposit insurance corporation or its successor, and shall notify each affected governmental unit of the amount of its deposit, as so disclosed, and the portion thereof that is so insured, and shall require each affected governmental unit to provide him or her with a verified statement showing the amount of its deposit, as disclosed by its own records, within thirty days after receipt of such notification.

(c) Upon receipt of all verified statements from an affected governmental unit, he shall determine and fix the net deposit liability of the defaulting depository to such affected governmental unit. Upon receipt of all such verified statements from all affected governmental units, he shall determine and fix the aggregate net deposit liability of the defaulting depository to all affected governmental units.

(d) The commissioner shall proceed to liquidate the eligible collateral maintained or pledged by the defaulting depository which he had theretofore seized and may, from time to time, apply the amount realized from such liquidation against the net deposit liability to



any governmental unit. The commissioner shall maintain a reserve from such amount realized for the payment of the aggregate net deposit liability to all affected governmental units until payment is made to all affected governmental units.

(e) In the event the federal deposit insurance corporation or its successor is appointed and acts as liquidator or receiver of any eligible public depository under state or federal law, those duties specified in this section to be performed by the commissioner may, where the commissioner deems appropriate, be delegated by the commissioner to and performed by the federal deposit insurance corporation or its successor.

**Source:** L. 75: Entire article added, p. 404, § 1, effective July 1. L. 87: (1)(e) amended, p. 469, § 4, effective May 1. L. 89: (1)(b) to (1)(d) amended, p. 614, § 11, effective April 19. L. 2004: IP(1), (1)(b), and (1)(e) amended, p. 144, § 37, effective July 1.

#### **11-47-114. Assessments made - exceptions. (Repealed)**

**Source:** L. 75: Entire article added, p. 404, § 1, effective July 1. L. 2004: Entire section repealed, p. 145, § 38, effective July 1.

#### **11-47-115. When assessments payable - procedure if not paid. (Repealed)**

**Source:** L. 75: Entire article added, p. 405, § 1, effective July 1. L. 2004: Entire section repealed, p. 145, § 39, effective July 1.

#### **11-47-116. Disposition of assessments - subrogation of claims - expenses. (Repealed)**

**Source:** L. 75: Entire article added, p. 405, § 1, effective July 1. L. 2004: Entire section repealed, p. 145, § 40, effective July 1.

#### **11-47-117. No impairment of obligations. (Repealed)**

**Source:** L. 75: Entire article added, p. 405, § 1, effective July 1. L. 2004: Entire section repealed, p. 146, § 41, effective July 1.

**11-47-118. Public moneys to be deposited only in eligible public depositories - penalty for violation.** (1) It shall be unlawful for any public moneys to be deposited in any state-chartered savings and loan association, or in any federally chartered savings and loan association having its principal office in this state, other than one that has been designated by the commissioner as an eligible public depository, unless the entire amount of such deposit is insured by the federal deposit insurance corporation or its successor.

(2) Any official of a governmental unit having custody of or control over public moneys who violates the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, which fine shall be mandatory, and, upon any such conviction, the court may adjudge that he be removed from office.

(3) Notwithstanding any other provision of this section to the contrary, nothing shall be construed to prevent a savings and loan association which is an eligible public depository operating pursuant to the provisions of this article from being or acting as an agent in behalf of any public entity for the purposes of making investments as authorized by part 6 of article 75 of title 24, C.R.S. Any such savings and loan association shall maintain such accounting records as are necessary to readily distinguish between the activities authorized by said part 6 of article 75 of title 24, C.R.S., and the purposes of the public deposit protection requirements imposed upon it as a condition of being an eligible public depository. The financial services board may promulgate such rules and regulations as it deems desirable to

ensure that the activities authorized under part 6 of article 75 of title 24, C.R.S., and the protection of public funds pursuant to this article are not commingled.

**Source:** **L. 75:** Entire article added, p. 406, § 1, effective July 1. **L. 89:** (3) added, p. 615, § 12, effective April 19. **L. 93:** (3) amended, p. 1454, § 18, effective June 6. **L. 2004:** (1) amended, p. 146, § 42, effective July 1.

**11-47-119. Liability of officials of governmental units.** No official of a governmental unit who acted in good faith in selecting, designating, or approving any eligible public depository for the deposit of public moneys in his custody or under his control shall be liable for any loss of public moneys deposited therein by reason of the occurrence of an event of default with respect to such depository.

**Source:** **L. 75:** Entire article added, p. 406, § 1, effective July 1.

**11-47-120. Authority to accept deposits - acceptance of insured deposits.** Any state-chartered savings and loan association, or any federally chartered savings and loan association having its principal office in this state that is authorized by the laws of this state or of the United States to accept deposit accounts or savings deposits, is authorized to accept and hold, and any governmental unit is authorized to make and maintain in such association, deposits of public moneys as provided in this article. Any such association is authorized to accept and hold, and any governmental unit is authorized to make and maintain therein, deposits of public moneys to the extent that the full amount thereof is insured by the federal deposit insurance corporation or its successor, even though such association has not elected to be designated as an eligible public depository under the provisions of this article.

**Source:** **L. 75:** Entire article added, p. 406, § 1, effective July 1. **L. 2004:** Entire section amended, p. 146, § 43, effective July 1.

## ARTICLE 47.5

### Savings and Loan Guaranty Act

#### 11-47.5-101 to 11-47.5-109. (Repealed)

**Source:** **L. 91:** Entire article repealed, p. 666, § 7, effective May 31.

**Editor's note:** This article was added in 1987. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 48

### Electronic Funds Transfers for Financial Institutions Other Than Banks

**Cross references:** For electronic funds transfers for banks, see article 105 of this title.

11-48-101.	Applicability.	11-48-105.	Sharing.
11-48-102.	Limitations.	11-48-106.	Consumer protection.
11-48-103.	Communications facility.	11-48-107.	Access to automated clearing-house.
11-48-104.	No operation by financial institution employees.		

**11-48-101. Applicability.** This article shall be applicable to any savings and loan association organized under the provisions of article 41 of this title or under federal law and



having its principal office in this state, any credit union organized under the provisions of article 30 of this title or federal law and having its principal office in this state, and any industrial bank incorporated under the provisions of article 108 of this title and having its principal office in this state. As used in this article, "financial institution" means any such savings and loan association, credit union, or industrial bank.

**Source:** L. 77: Entire article added, p. 553, § 3, effective May 20. L. 2003: Entire section amended, p. 1208, § 13, effective July 1.

**11-48-102. Limitations.** This article shall be construed to authorize any financial institution to engage in electronic funds transfers only to the extent of transactions authorized in applicable law governing such institutions. The provisions of this article shall govern as to communications facilities owned or controlled by such institutions.

**Source:** L. 77: Entire article added, p. 553, § 3, effective May 20.

**11-48-103. Communications facility.** As used in this article, "communications facility" means an attended or unattended electronic information processing device, other than an ordinary telephone instrument, located in this state separate and apart from a financial institution and through which account holders and financial institutions may engage in transactions by means of either the instant transmission (on-line) of electronic impulses to and from the financial institution or its data processing agent or the recording of electronic impulses or other indicia of a transaction for delayed transmission (off-line) to a financial institution or its data processing agent. Such a device located on the premises of a financial institution shall be a communications facility if such device is utilized by the account holders of other financial institutions.

**Source:** L. 77: Entire article added, p. 553, § 3, effective May 20.

**11-48-104. No operation by financial institution employees.** No communications facility located separate and apart from a financial institution shall be operated by an employee or agent of any financial institution, and no agent or employee of the retailer where a facility is located who operates it shall be deemed to be the agent or employee of any financial institution using the facility or with which transactions are accomplished by means of the facility. No employee or agent of any financial institution shall be stationed at any communications facility located separate and apart from the financial institution except on a temporary basis for the purpose of instructing customers in the use of facilities or for servicing or observing the operation of such facilities.

**Source:** L. 77: Entire article added, p. 554, § 3, effective May 20.

**11-48-105. Sharing.** (1) A financial institution shall make any communications facility available to any similar financial institution for the use of its account holders on the basis of fair, equitable, and nondiscriminatory standards and charges. For purposes of this section, a savings and loan association is similar to any other savings and loan association, a credit union is similar to any other credit union, and an industrial bank is similar to any other industrial bank. A communications facility on the premises of a financial institution is not subject to the mandatory access provisions of this subsection (1). Such a facility may but is not required to be made available for use by the account holders of any similar financial institution.

(2) A financial institution may but is not required to make the use of any communications facility available to a dissimilar financial institution and to any state or national bank in this state for the use of its account holders. Any such use shall be on a fair and reasonable contractual basis.

**Source:** L. 77: Entire article added, p. 554, § 3, effective May 20.

**11-48-106. Consumer protection.** (1) Every financial institution using a communications facility shall provide its account holders, at the time the facility is used, with a receipt or record of each transaction initiated at a facility. Such receipt or record shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the transaction evidenced by such receipt or record. When a financial institution furnishes a statement of account to an account holder, such statement shall reflect each transaction affecting such account made by the account holder at a communications facility during the period covered by the statement.

(2) With respect to any card or other device issued to an account holder for use at a communications facility, any account holder whose card or device is lost or stolen and subsequently used by an unauthorized person shall only be liable for the lesser of fifty dollars or the amount of money, goods, or services obtained by the unauthorized use prior to notice to the financial institution which issued the card or device of the theft or loss. If the unauthorized use occurs through no fault of the account holder, no liability shall be imposed on the account holder.

(3) No account holder shall be held liable for any loss occurring as the result of any tampering or manipulation of a communications facility unless he performs or authorizes such acts.

**Source:** L. 77: Entire article added, p. 554, § 3, effective May 20.

**11-48-107. Access to automated clearinghouse.** Effective January 1, 1978, an automated clearinghouse in this state shall permit direct access to or membership in such clearinghouse by any financial institution if such access is not prohibited by any rule or regulation of the federal reserve board and if the financial institution agrees to abide by the rules of the clearinghouse. For purposes of this section, "automated clearinghouse" means a group of financial institutions or banks which have agreed to abide by certain rules and procedures for the purpose of exchanging payments and settling balances of participating financial institutions on computer tape to accomplish settlement of transactions by posting credits and debits to reserve balances maintained by member banks of the federal reserve systems through the federal reserve system.

**Source:** L. 77: Entire article added, p. 554, § 3, effective May 20.

## SECURITIES

### Fiduciaries and Trusts

#### ARTICLE 50

#### Transfers to Minors

**Editor's note:** This article, formerly known as the "Colorado Uniform Gifts to Minors Act", was numbered as article 3 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1984, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**Law reviews:** For article, "Statutory Custodianship Trusts", see 13 Colo. Law. 786 (1984); for article, "Colorado Uniform Transfers to Minors Act", see 13 Colo. Law. 2223 (1984); for article, "Uniform State Laws of Interest to Colorado Probate Lawyers", see 14 Colo. Law. 1961 (1985); for article, "Anticipating Disabilities: Voluntary Planning Opportunities in Colorado", see 17 Colo. Law. 437 (1988); for article, "Standards of Prudent Investment for Minors Act Custodians", see 19 Colo. Law. 39 (1990); for article, "Current Issues Relating to Transfers to Minors", see 29 Colo. Law. 73 (October 2000); for article, "Age Requirements in Colorado: A Guide for Estate Planners", see 34



Colo. Law. 87 (August 2005); for article, "Retaining Control of Gifts to Minors: UTMA and IRC 2503(c) Trust Options", see 34 Colo. Law. 39 (November 2005); for article, "The Uniform Transfers to Minors Act: Extending the Period of Protection", see 35 Colo. Law. 27 (January 2006).

11-50-101.	Short title.	11-50-115.	Use of custodial property.
11-50-102.	Definitions.	11-50-116.	Custodian's expenses, compensation, and bond.
11-50-103.	Scope and jurisdiction.	11-50-117.	Exemption of third person from liability.
11-50-104.	Nomination of custodian.	11-50-118.	Liability to third persons.
11-50-105.	Transfer by gift or exercise of power of appointment.	11-50-119.	Renunciation, resignation, death, or removal of custodian - designation of successor custodian.
11-50-106.	Transfer authorized by will or trust.	11-50-120.	Accounting by and determination of liability of custodian.
11-50-107.	Other transfer by fiduciary.	11-50-121.	Termination of custodianship.
11-50-108.	Transfer by obligor.	11-50-122.	Applicability.
11-50-109.	Receipt for custodial property.	11-50-123.	Effect on existing custodianships.
11-50-110.	Manner of creating custodial property and effecting transfer - designation of initial custodian - control.	11-50-124.	Uniformity of application and construction.
11-50-111.	Single custodianship.	11-50-125.	Severability.
11-50-112.	Validity and effect of transfer.	11-50-126.	Prior transfers not affected.
11-50-113.	Care of custodial property.		
11-50-114.	Powers of custodian.		

**11-50-101. Short title.** This article shall be known and may be cited as the "Colorado Uniform Transfers to Minors Act".

**Source: L. 84:** Entire article R&RE, p. 383, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-101 as it existed prior to 1984.

**11-50-102. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Adult" means an individual who has attained the age of twenty-one years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means the district or probate court which would have jurisdiction of the minor's estate, if he had property other than custodial property, as provided in section 15-14-108 (1), C.R.S.
- (6) "Custodial property" means:
  - (a) Any interest in property transferred to a custodian under this article; and
  - (b) The income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under section 11-50-110 or a successor or substitute custodian designated under section 11-50-119.
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or conservator.
- (10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- (11) "Minor" means an individual who has not attained the age of twenty-one years.
- (12) "Person" means an individual, corporation, organization, or other legal entity.

(13) “Personal representative” means an executor, administrator, successor personal representative, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions.

(13.5) “Qualified minor’s trust” means a trust, including a trust created by a custodian, of which a minor is the sole current beneficiary and that satisfies the requirements of section 2503 (c) of the federal “Internal Revenue Code of 1986” and the regulations implementing that section.

(14) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) “Transfer” means a transaction that creates custodial property under section 11-50-110.

(16) “Transferor” means a person who makes a transfer under this article.

(17) “Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

**Source:** L. 84: Entire article R&RE, p. 383, § 1, effective July 1. L. 2000: (5) amended, p. 1832, § 2, effective January 1, 2001. L. 2007: (13.5) added, p. 126, § 2, effective July 1.

**Editor’s note:** This section is similar to former § 11-50-102 as it existed prior to 1984.

**11-50-103. Scope and jurisdiction.** (1) This article applies to a transfer that refers to this article in the designation under section 11-50-110 (1) by which the transfer is made if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this article is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

**Source:** L. 84: Entire article R&RE, p. 384, § 1, effective July 1.

**11-50-104. Nomination of custodian.** (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: “as custodian for \_\_\_\_\_ (name of minor) under the “Colorado Uniform Transfers to Minors Act””. The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 11-50-110 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 11-50-110. Unless the nomination of a custodian has



been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 11-50-110.

**Source: L. 84:** Entire article R&RE, p. 385, § 1, effective July 1.

**11-50-105. Transfer by gift or exercise of power of appointment.** A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 11-50-110.

**Source: L. 84:** Entire article R&RE, p. 385, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987).

**11-50-106. Transfer authorized by will or trust.** (1) A personal representative or trustee may make an irrevocable transfer pursuant to section 11-50-110 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under section 11-50-104 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under section 11-50-104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 11-50-110 (1).

**Source: L. 84:** Entire article R&RE, p. 385, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987).

**11-50-107. Other transfer by fiduciary.** (1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 11-50-110, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 11-50-110.

(3) A transfer under subsection (1) or (2) of this section may be made only if:

(a) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds ten thousand dollars in value.

**Source: L. 84:** Entire article R&RE, p. 385, § 1, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987).

**11-50-108. Transfer by obligor.** (1) Subject to subsections (2) and (3) of this section, a person not subject to section 11-50-106 or 11-50-107 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 11-50-110.

(2) If a person having the right to do so under section 11-50-104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under section 11-50-104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

**Source: L. 84:** Entire article R&RE, p. 386, § 1, effective July 1.

**11-50-109. Receipt for custodial property.** A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

**Source: L. 84:** Entire article R&RE, p. 386, § 1, effective July 1.

**11-50-110. Manner of creating custodial property and effecting transfer - designation of initial custodian - control.** (1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

(I) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(I) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";



(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(I) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(g) An interest in any property not described in paragraphs (a) to (f) of this subsection (1) is transferred to an adult other than the transferor or to a trust company by written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of paragraphs (a) (II) and (g) of subsection (1) of this section:

### TRANSFER UNDER THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT"

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to \_\_\_\_\_ (name of custodian), as custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act", the following: (insert a description of the custodial property sufficient to identify it).

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the "Colorado Uniform Transfers to Minors Act".

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

**Source: L. 84:** Entire article R&RE, p. 386, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-103 as it existed prior to 1984.

**11-50-111. Single custodianship.** A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

**Source: L. 84:** Entire article R&RE, p. 388, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-103 as it existed prior to 1984.

**11-50-112. Validity and effect of transfer.** (1) The validity of a transfer made in a manner prescribed in this article is not affected by:

(a) Failure of the transferor to comply with section 11-50-110 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 11-50-110 (1); or

(c) Death or incapacity of a person nominated under section 11-50-104 or designated under section 11-50-110 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to section 11-50-110 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this article, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this article.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this article.

**Source: L. 84:** Entire article R&RE, p. 388, § 1, effective July 1.

**11-50-113. Care of custodial property.** (1) A custodian shall:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for \_\_\_\_\_ (name of minor) under the "Colorado Uniform Transfers to Minors Act"".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

**Source: L. 84:** Entire article R&RE, p. 388, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-105 as it existed prior to 1984.



## ANNOTATION

**Law reviews.** For article, "The Prudent Investor Rule as it Affects Fiduciary Investments", see 21 Colo. Law. 1883 (1992).

**The standard of care set forth in subsection (2)** applies exclusively to custodians and not to any other fiduciaries. *Buder v. Sartore*, 774 P.2d 1383 (Colo. 1989).

**Post-1984 purchases of penny stocks** which father made as custodian of children's funds violated the custodial standard of care set forth in subsection (2). *Buder v. Sartore*, 774 P.2d 1383 (Colo. 1989).

**11-50-114. Powers of custodian.** (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(1.5) At any time, a custodian may transfer part or all of a custodial property to a qualified minor's trust without a court order. Such a transfer terminates the custodianship to the extent of the transfer.

(2) This section does not relieve a custodian from liability for breach of section 11-50-113.

**Source:** L. 84: Entire article R&RE, p. 389, § 1, effective July 1. L. 2007: (1.5) added, p. 126, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-50-105 as it existed prior to 1984.

**11-50-115. Use of custodial property.** (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) The duty or ability of the custodian personally or of any other person to support the minor; or

(b) Any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

**Source:** L. 84: Entire article R&RE, p. 389, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-105 as it existed prior to 1984.

## ANNOTATION

**Gifts not to reduce parent's legal obligation of support.** Where a parent or parents voluntarily make gifts to children during the parents' marriage and the gifts are not in fulfillment of a court order to pay support, and where the parents are, at the time of dissolution of the marriage, able to meet their support obligations, the court may order that such gifts not be used to reduce the legal obligation of support. This rule assumed that the court had properly considered the financial resources of the children, as required by § 14-10-115 (1), before ordering the

amount of support to be paid by the parents. In *re Wolfert*, 42 Colo. App. 433, 598 P.2d 524 (1979) (decided under former § 11-50-105 of the Uniform Gifts to Minors Act).

Trial court did not abuse discretion in determining parties' ability to meet obligation for child support and postsecondary education independently of Uniform Gifts to Minors Act account funds where parties combined gross income exceeded upper limits of child support guidelines. In *re Ludwig*, 122 P.3d 1056 (Colo. App. 2005).

**11-50-116. Custodian's expenses, compensation, and bond.** (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under section 11-50-105, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in section 11-50-119 (6), a custodian need not give a bond.

**Source:** L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-106 as it existed prior to 1984.

**11-50-117. Exemption of third person from liability.** (1) A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(a) The validity of the purported custodian's designation;

(b) The propriety of, or the authority under this article for, any act of the purported custodian;

(c) The validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(d) The propriety of the application of any property of the minor delivered to the purported custodian.

**Source:** L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-107 as it existed prior to 1984.

**11-50-118. Liability to third persons.** (1) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property, or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

**Source:** L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

**11-50-119. Renunciation, resignation, death, or removal of custodian - designation of successor custodian.** (1) A person nominated under section 11-50-104 or designated under section 11-50-110 as custodian may decline to serve by delivering a valid disclaimer in the form provided in part 12 of article 11 of title 15, C.R.S., to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 11-50-104, the person who made the nomination may nominate a substitute custodian under section 11-50-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind



of property under section 11-50-110 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under section 11-50-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 11-50-105 or to require the custodian to give appropriate bond.

**Source:** L. 84: Entire article R&RE, p. 391, § 1, effective July 1. L. 94: (1) amended, p. 1039, § 16, effective July 1, 1995. L. 2011: (1) amended, (SB 11-166), ch. 203, p. 868, § 3, effective August 10.

**Editor's note:** This section is similar to former § 11-50-108 as it existed prior to 1984.

**11-50-120. Accounting by and determination of liability of custodian.** (1) A minor who has attained the age of fourteen years, the minor's guardian or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

- (a) For an accounting by the custodian or the custodian's legal representative; or
- (b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 11-50-118 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under section 11-50-119 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

**Source: L. 84:** Entire article R&RE, p. 392, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-109 as it existed prior to 1984.

#### ANNOTATION

**Subsection (1) (a),** by authorizing the court to order a custodian to account for funds held on behalf of a minor, allows the court broad discretion in fashioning an appropriate remedy when the account has been improperly maintained. *Buder v. Sartore*, 774 P.2d 1383 (Colo. 1989).

**11-50-121. Termination of custodianship.** (1) The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (a) The minor's attainment of twenty-one years of age; or
- (b) The minor's death.

**Source: L. 84:** Entire article R&RE, p. 392, § 1, effective July 1. **L. 91:** Entire section amended, p. 1442, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-105 as it existed prior to 1984.

**11-50-122. Applicability.** (1) This article applies to a transfer within the scope of section 11-50-103 made on or after July 1, 1984, if:

- (a) The transfer purports to have been made under the "Colorado Uniform Gifts to Minors Act" as it existed prior to said date; or
- (b) The instrument by which the transfer purports to have been made uses in substance the designation: "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this article is necessary to validate the transfer.

**Source: L. 84:** Entire article R&RE, p. 392, § 1, effective July 1.

**11-50-123. Effect on existing custodianships.** (1) Any transfer of custodial property as now defined in this article made before July 1, 1984, is validated notwithstanding that there was no specific authority in the "Colorado Uniform Gifts to Minors Act", as it existed prior to July 1, 1984, for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This article applies to all transfers made before July 1, 1984, in a manner and form prescribed in the former "Colorado Uniform Gifts to Minors Act", except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1984.

(3) Sections 11-50-102 and 11-50-121 with respect to the age of a minor for whom custodial property is held under this article do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen before July 1, 1984.

**Source: L. 84:** Entire article R&RE, p. 392, § 1, effective July 1.

**11-50-124. Uniformity of application and construction.** This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

**Source: L. 84:** Entire article R&RE, p. 393, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-50-110 as it existed prior to 1984.



**11-50-125. Severability.** If any provisions of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**Source:** L. 84: Entire article R&RE, p. 393, § 1, effective July 1.

**11-50-126. Prior transfers not affected.** To the extent that this article, pursuant to section 11-50-123 (2), does not apply to transfers made in a manner prescribed in the “Colorado Uniform Gifts to Minors Act”, as it existed prior to July 1, 1984, or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal and reenactment of the “Colorado Uniform Gifts to Minors Act” does not affect those transfers or those powers, duties, and immunities.

**Source:** L. 84: Entire article R&RE, p. 393, § 1, effective July 1.

**Editor’s note:** This section is similar to former § 11-50-111 as it existed prior to 1984.

**Securities**

**ARTICLE 51**

**Securities**

**Editor’s note:** This article was numbered as article 1 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

**Cross references:** For provisions on investment securities, see article 8 of title 4.

**Law reviews:** For article, “Recent Developments Affecting Securities Litigation in Colorado”, see 13 Colo. Law. 1161 (1984); for article, “Securities”, which discusses Tenth Circuit decisions dealing with securities law, see 61 Den. L.J. 369 (1984), 62 Den. U.L. Rev. 295 (1985), and 63 Den. U. L. Rev. 435 (1986); for article, “Securities Regulation in the Burger Court”, see 56 U. Colo. L. Rev. 193 (1985); for article, “Securities and Commodity Futures Regulation”, which discusses Tenth Circuit decisions dealing with securities law, see 64 Den. U.L. Rev. 329 (1987); for article, “Securities Fraud and the Governmental Issuer”, see 16 Colo. Law. 1392 (1987); for article, “Arbitration with a View to the Future”, see 17 Colo. Law. 2175 (1988); for article “Resort Condominiums and the Federal Securities Laws”, see 18 Colo. Law. 229 (1989); for a discussion of Tenth Circuit decisions dealing with securities law, see 66 Den. U.L. Rev. 797 (1989); for article, “The New Colorado Securities Act”, see 19 Colo. Law. 1767 (1990); for article, “Securities Litigation in the 1990s”, see 19 Colo. Law. 2045 (1990); for article, “Colorado Securities Act of 1990: The Securities Commissioner’s View”, see 19 Colo. Law. 2041 (1990); for a discussion of Tenth Circuit decisions dealing with securities law, see 67 Den. U. L. Rev. 767 (1990); for article, “Colorado’s Regulation of Investment Advisers”, see 28 Colo. Law. 39 (April 1999); for article, “Contribution Rights in Colorado Securities Fraud Cases”, see 29 Colo. Law. 51 (June 2000); for article, “Colorado Securities Act Twenty Years Later”, 40 Colo. Law. 31 (December 2011).

**PART 1**

**PART 2**

**SHORT TITLE, PURPOSE, AND SCOPE**

**DEFINITIONS AND REFERENCES TO  
FEDERAL STATUTES AND RULES**

- 11-51-101. Short title and purpose.
- 11-51-102. Scope of article.

- 11-51-201. Definitions.

- 11-51-201.5. Investment adviser registration depository - definition.  
 11-51-202. References to federal statutes.

## PART 3

REGISTRATION OF SECURITIES  
AND EXEMPTIONS

- 11-51-301. Requirement for registration of securities.  
 11-51-302. General registration provisions.  
 11-51-303. Registration by coordination.  
 11-51-304. Registration by qualification.  
 11-51-305. Filing of sales literature.  
 11-51-306. Denial, suspension, or revocation of registration.  
 11-51-307. Exempt securities.  
 11-51-308. Exempt transactions.  
 11-51-309. Discretionary exemptions.  
 11-51-310. Denial or revocation of exemptions.  
 11-51-311. Coordination of exemptions.

## PART 4

LICENSING AND REGULATION OF  
BROKER-DEALERS AND  
SALES REPRESENTATIVES

- 11-51-401. Licensing and notice filing requirements.  
 11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives.  
 11-51-403. Application for license - notice filing requirements.  
 11-51-404. License and notice fees.  
 11-51-405. Examinations and alternate qualifications.  
 11-51-406. General provisions.  
 11-51-407. Operating requirements.  
 11-51-408. Licensing of successor firms.  
 11-51-409. Access to records.  
 11-51-409.5. Mandatory disclosure - investment advisers and investment adviser representatives.  
 11-51-410. Denial, suspension, or revocation.  
 11-51-411. Abandonment of license.  
 11-51-412. Withdrawal.

## PART 5

FRAUD AND OTHER  
PROHIBITED CONDUCT

- 11-51-501. Fraud and other prohibited conduct.  
 11-51-502. Misleading filings.

- 11-51-503. Unlawful representation concerning a license, registration, or exemption.

## PART 6

## ENFORCEMENT AND CIVIL LIABILITY

- 11-51-601. Investigations - subpoenas.  
 11-51-602. Enforcement by injunction.  
 11-51-603. Criminal penalties.  
 11-51-603.5. Concurrent enforcement by attorney general - legislative declaration.  
 11-51-604. Civil liabilities.  
 11-51-605. Burden of proof.  
 11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner - rules.  
 11-51-607. Judicial review of orders.

## PART 7

## ADMINISTRATION AND FEES

- 11-51-701. Division of securities - creation - powers and duties.  
 11-51-702. Division subject to termination. (Repealed)  
 11-51-702.5. Securities board - creation - duties - repeal.  
 11-51-703. Administration of article.  
 11-51-704. Rules, forms, and orders.  
 11-51-705. Interpretive opinions.  
 11-51-706. Consent to service of process.  
 11-51-707. Collection of fees - division of securities cash fund created.  
 11-51-708. Administrative files.

## PART 8

## EFFECTIVE DATE - REPEAL OF ARTICLE

- 11-51-801. Effective date of article.  
 11-51-802. Savings provisions.  
 11-51-803. Repeal of article.

## PART 9

LOCAL GOVERNMENT INVESTMENT  
POOL TRUST FUND ADMINISTRATION  
AND ENFORCEMENT ACT

- 11-51-901. Short title.  
 11-51-902. General powers of securities commissioner.  
 11-51-903. Interests in local government investment pool trust fund.  
 11-51-904. Requirement for registration of local government investment pools.  
 11-51-905. General registration requirements.



11-51-906. Reports to securities commissioner.

11-51-907.

Access to records.

11-51-908.

Confidentiality of information.

## PART 1

### SHORT TITLE, PURPOSE, AND SCOPE

**11-51-101. Short title and purpose.** (1) This article shall be known and may be cited as the "Colorado Securities Act".

(2) The purposes of this article are to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

(3) The provisions of this article and rules made under this article shall be coordinated with the federal acts and statutes to which references are made in this article and rules and regulations promulgated under those federal acts and statutes, to the extent coordination is consistent with both the purposes and the provisions of this article.

**Source:** L. 90: Entire article R&RE, p. 700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-101 as it existed prior to 1990.

## ANNOTATION

**Law reviews.** For article, "State and Federal Securities Surveillance: Some Attendant Problems", see 27 Rocky Mt. L. Rev. 496 (1955). For article, "The Colorado Securities Law", see 35 Dicta 271 (1958). For article, "One Year Review of Corporations, Partnership, and Agency", see 36 Dicta 27 (1959). For article, "The New Colorado Securities Act — A Quest for Uniformity", see 38 Dicta 213 (1961). For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Investment Contracts Under the Colorado and Uniform Securities Acts", see 49 U. Colo. L. Rev. 391 (1978). For article, "The Securities Act of 1981 — Two Years Later", see 12 Colo. Law. 1236 (1983). For article, "After Federal Securities Reform: Blue Sky Ahead for Colorado Class Actions - Part I," see 25 Colo. Law. 37, (July 1996). For article, "Auditor Liability under Colorado Blue Sky Laws", see 29 Colo. Law. 63 (October 2000).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Purpose.** The broad purpose of securities acts is to prevent the exploitation of investors through full and fair disclosure relative to the issuance of securities. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Securities acts are remedial in nature and should be broadly construed** to effectuate their

purpose. *Raymond Lee Org., Inc. v. Securities Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Civil actions arising under this article are strictly analogous to an action under § 12(2)** of the securities exchange act of 1934 — but not to either a § 10(b) action alleging violation of rule 10b-5(1) and (3), nor to a § 10(b) action alleging violation of rule 10b-5(2) when proof of scienter and reliance is required. *Trussell v. United Underwriters, Ltd.*, 228 F. Supp. 757 (D. Colo. 1964) (decided under repealed § 125-1-1, CRS 53, which was similar to this section).

**Parallels federal acts.** The Colorado securities act parallels the federal securities act of 1933 and the securities and exchange act of 1934. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

**And federal law is persuasive.** While the Colorado supreme court is not bound by federal law in the interpretation of the Colorado securities act, insofar as the provisions and purposes of this statute parallel those of the federal enactments, such federal authorities are highly persuasive. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The hallmark of state and federal securities regulation** has always been close attention to the facts of each case and a substantive appraisal of the commercial realities of the offering. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Applied** in *Dietrich Corp. v. King Res. Co.*, 583 F.2d 1143 (10th Cir. 1978).

**11-51-102. Scope of article.** (1) Except as provided in subsection (7) of this section, sections 11-51-301, 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to purchase is made and accepted in this state.

(2) Sections 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who purchase or offer to purchase when an offer to purchase is made in this state or when an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and is received at the place to which it is directed or, in the case of a mailed offer, at any post office in this state.

(4) For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror is to be in this state and it is received at the place to which it is directed or, in the case of a mailed acceptance, at any post office in this state.

(5) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a newspaper or other publication of general, regular, and paid circulation is not made in this state if the publication:

(I) Is not published in this state; or

(II) Is published in this state, but has had more than two-thirds of its circulation outside this state during the past twelve months.

(b) For the purpose of this subsection (5), if a publication is published in editions, each edition is a separate publication except for material common to all editions.

(6) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a radio or television broadcast or other publicly distributed electronic communication received in this state which originates outside this state is not made in this state. For the purpose of subsection (8) of this section, investment advisory services limited to holding oneself out as an investment adviser or financial planner or similar type of adviser or consultant, but not the transaction of any further business, in a radio or television broadcast or other publicly distributed electronic communication received in this state in a manner originating outside this state shall not be construed as investment advisory services provided in this state.

(b) For the purpose of this subsection (6), a radio or television broadcast or other publicly distributed electronic communication originates in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(I) The broadcast or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(II) The broadcast or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(III) The broadcast or communication is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(IV) The broadcast or communication consists of an electronic signal that originates in this state, but which is not intended for redistribution to the general public in this state.

(7) Section 11-51-301 and section 11-51-604, to the extent such section relates to section 11-51-301, do not apply to any person with respect to a sale or offer to sell where the sale or offer to sell is directed to another person not located in this state, does not violate a securities registration requirement or its equivalent in the laws of the jurisdiction in which the other person is located, and is not made for the purpose of evading the provisions of this article.

(8) For purposes of section 11-51-401 (1.5), (1.6), and (2.5), "transacting business in this state" includes engaging in any of the activities enumerated in section 11-51-201 (9.5) (a) or holding oneself out as an investment adviser, financial planner, or similar type of



adviser or consultant if such activities are engaged in, or the holding out occurs, within the state regardless of whether a person to whom services are provided or to whom such holding out is made is physically present within the state. "Transacting business in this state" also includes engaging in the services or so holding oneself out whenever a person to whom such services are provided or to whom such holding out is made is both a resident of, and physically present within, the state.

(9) Section 11-51-501 (2) and (3) apply if:

(a) Any of the proscribed conduct occurs within this state regardless of whether a client or prospective client is present within the state when such conduct occurs; or

(b) A client or prospective client is physically present within the state when any of the proscribed conduct occurs in this state.

**Source:** L. 90: Entire article R&RE, p. 700, § 1, effective July 1. L. 98: (1), (2), and (6)(a) amended and (8) and (9) added, p. 546, § 1, effective April 30.

**Editor's note:** This section is similar to former § 11-51-127 as it existed prior to 1990.

### ANNOTATION

**Annotator's note.** Since § 11-51-102 is similar to § 11-51-127 as it existed prior to the 1990 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

**Jurisdiction.** Whether the contracts are executed in Colorado or out of state is irrelevant since the Colorado securities act expressly covers the solicitation of an offer to buy in this state, and actual execution of a contract within the state is not essential to the exercise of jurisdiction over appellant. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75

(1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**No requirement that entire transaction occur in Colorado.** The disjunctive "or" used in subsection (1) reinforces the view that, whenever either the offer or the sale occurs in this state, the Colorado Securities Act applies. *Rosenthal v. Dean Witter Reynolds, Inc.*, 883 P.2d 522 (Colo. App. 1994), aff'd, 908 P.2d 1095 (Colo. 1995).

**Applied** in *Simms Inv. Co. v. E.F. Hutton & Co. Inc.*, 699 F. Supp. 543 (M.D. N. C. 1988).

### PART 2

### DEFINITIONS AND REFERENCES TO FEDERAL STATUTES AND RULES

**11-51-201. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Bank" means a banking institution organized under the laws of the United States, a member bank of the federal reserve system, any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the comptroller of the currency, which is supervised and examined by a state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the federal "Securities Act of 1933", and a receiver, conservator, or other liquidating agent of any institution or firm described in this subsection (1).

(2) "Broker-dealer" means a person engaged in the business of effecting purchases or sales of securities for the accounts of others or in the business of purchasing and selling securities for the person's own account. The term does not include the following:

(a) A sales representative;

(b) An issuer with respect to purchasing and selling the issuer's own securities;

(c) A bank; or

(d) Any other person or class of persons the securities commissioner designates by rule or order.

(3) "Central registration depository" means the computer registration system known as the central registration depository which is maintained by the national association of securities dealers and the states that participate in that system or any successor system.

(4) "Commodity futures trading commission" means the commission established by the federal "Commodity Exchange Act".

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, share, certificate, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(5.5) (a) "Federal covered adviser" means a person who is registered or required to be registered under section 203 of the federal "Investment Advisers Act of 1940".

(b) "Federal covered adviser" does not include either a person excepted from the definition of "investment adviser" or exempt from registration under the federal "Investment Advisers Act of 1940" solely by reason of the fact such person advises a local government investment pool trust fund under article 75 of title 24, C.R.S.

(6) "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its latest fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

(7) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(8) "Fraudulent conduct" means, for the purposes of section 11-51-410, conduct within this state which constitutes a willful violation of section 11-51-501 or conduct outside this state which would constitute a willful violation of section 11-51-501 if it had occurred within this state.

(9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9.5) (a) (I) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.



(II) "Investment adviser" includes financial planners or other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing investment advisory services to others for compensation.

(b) "Investment adviser" does not include:

(I) A federal covered adviser;

(II) A publisher of a bona fide newspaper, magazine, or business or financial publication with a regular paid circulation;

(III) A publisher of a securities advisory newsletter with a regular and paid circulation who does not provide advice to subscribers on their specific investment situations;

(IV) An author of material included in a newspaper, magazine, publication, or newsletter who does not otherwise come within the definition of an investment adviser or investment adviser representative;

(V) An investment adviser representative;

(VI) A licensed broker-dealer or sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of the person's business as a broker-dealer and who receives no special compensation for such services;

(VII) A depository institution or a person employed by or directly associated with a depository institution;

(VIII) Any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of that person's profession;

(IX) A person who provides investment advisory services solely while acting as an investment banker or business broker on behalf of one or more parties to, and in connection with, a transaction or proposed transaction for the transfer of a controlling interest in a business enterprise;

(X) An official, employee, or representative of the United States, an individual state, a political subdivision of an individual state, or an agency or a corporate or other instrumentality of the United States or an individual state, while acting in such person's official capacity on behalf of such entity;

(XI) A licensed real estate broker or salesperson whose advice to clients relates only to the investment or acquisition of real property or an interest in real property; or

(XII) Any other person or class of persons excluded by rule or order of the securities commissioner.

(9.6) (a) "Investment adviser representative" with respect to an investment adviser means an individual who has a place of business in this state; who is a partner, officer, or director of an investment adviser; who occupies a status similar to or performs functions similar to those of a partner, officer, or director for an investment adviser; or who is employed or otherwise associated with an investment adviser who:

(I) Makes recommendations or otherwise renders advice to clients regarding securities;

(II) Manages securities accounts or portfolios for clients;

(III) Determines which recommendation or advice regarding securities should be given to clients; or

(IV) Supervises employees of, or persons otherwise associated with, an investment adviser or a federal covered adviser who perform any of the duties specified in this paragraph (a).

(b) "Investment adviser representative" for a federal covered adviser means any individual with a place of business in this state who is an "investment adviser representative" as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(c) The term "investment adviser representative" does not include:

(I) A licensed sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a sales representative and who receives no special consideration in connection with providing such services; or

(II) Any other individual or class of individuals excluded by rule or order of the securities commissioner.

(9.7) "Investment advisory services" means those activities performed by a person in connection with such person's engaging in any of the activities described in paragraph (a) of subsection (9.5) of this section, including such activities by a federal covered adviser or an investment adviser representative for a federal covered adviser.

(10) "Issuer" means any person who issues or proposes to issue any security; except that, with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that, in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that, with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that, with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of offering them for sale.

(11) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(12) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(12.5) "Place of business" for investment adviser representatives shall have the same meaning as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(13) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(b) "Purchase" or "buy" includes every contract of purchase of, contract to buy, or acquisition of a security or interest in a security for value. "Offer to purchase" includes every attempt or offer to acquire, or solicitation of an offer to sell, a security or interest in a security for value.

(c) "Offer" means an offer to sell or an offer to purchase.

(d) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered, sold, and purchased for value.

(e) A purported gift of assessable stock is considered to involve an offer, sale, and purchase.

(f) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(g) An "offer", "offer to sell", "offer to purchase", "sale", and "purchase" shall be deemed to be involved so far as the security holders of a corporation or other person are concerned where, pursuant to statutory provisions of the jurisdiction under which such corporation or other person is organized, or pursuant to provisions contained in its articles of incorporation or similar controlling instruments, or otherwise, there is submitted for the vote or consent of such security holders a plan or agreement for the following:

(I) A reclassification of securities of such corporation or other person, other than a stock split, reverse stock split, or change in par value, which involves the substitution of a security for another security;



(II) A statutory merger or consolidation or similar plan of acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person, except where the sole purpose of the transaction is to change an issuer's domicile; or

(III) A transfer of assets of such corporation or other person to another person, in consideration of the issuance of securities of such other person or any of its affiliates, if:

(A) Such plan or agreement provides for dissolution of the corporation or other person whose security holders are voting or consenting;

(B) Such plan or agreement provides for a pro rata or similar distribution of such securities to the security holders voting or consenting;

(C) The board of directors or similar representative of such corporation or other person adopts resolutions relative to sub-subparagraph (A) or (B) of this subparagraph (III) within one year after taking of such vote or consent; or

(D) The transfer of assets is a part of a preexisting plan for distribution of such securities, notwithstanding the provisions of sub-subparagraph (A), (B), or (C) of this subparagraph (III).

(h) The terms defined in this subsection (13) do not include any bona fide pledge or loan or any dividend payable by an issuer only in its own securities if nothing of value is given by stockholders for the dividend.

(14) "Sales representative" means an individual, other than a broker-dealer, either authorized to act and acting for a broker-dealer in effecting or attempting to effect purchases or sales of securities or authorized to act and acting for an issuer in effecting or attempting to effect purchases or sales of the issuer's own securities. An individual so acting for an issuer is not a sales representative if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer. A partner, officer, or director of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is a sales representative only if the individual otherwise comes within the definition.

(15) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(16) "Securities commissioner" means the commissioner of securities created by section 11-51-701.

(17) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period. For purposes of this article, an "investment contract" need not involve more than one investor nor be limited to those circumstances wherein there are multiple investors who are joint participants in the same enterprise.

(18) "Self-regulatory organization" means a national securities exchange registered under section 6 of the federal "Securities Exchange Act of 1934", a national securities association of broker-dealers registered under section 15A of the federal "Securities Exchange Act of 1934", a clearing agency registered under section 17A of the federal "Securities Exchange Act of 1934", the municipal securities rule-making board established under section 15B of the federal "Securities Exchange Act of 1934", or a futures association registered under section 21 of the federal "Commodity Exchange Act".

(19) "State" means any state, territory, or possession of the United States, the District of Columbia, or Puerto Rico.

(20) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, in exchange for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:

(a) Any transaction between a viator and a viatical settlement provider as defined by section 10-7-602, C.R.S.;

(b) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by section 10-7-602, C.R.S., or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

(c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

(d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with title 10, C.R.S.

**Source:** L. 90: Entire article R&RE, p. 702, § 1, effective July 1. L. 98: (5.5), (9.5), (9.6), (9.7), and (12.5) added, p. 547, § 2, effective April 30. L. 2005: (17) amended and (20) added, p. 1324, § 2, effective January 1, 2006.

**Editor's note:** This section is similar to former § 11-51-102 as it existed prior to 1990.

**Cross references:** For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.; for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Small Business Investment Act of 1958", see Pub.L. 85-699, codified at 15 U.S.C. sec. 661 et seq.

## ANNOTATION

**Law reviews.** For note, "Corporations — Investment Clubs", see 31 Rocky Mt. L. Rev. 358 (1959). For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965). For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Securities Registration Considerations in Condominium Developments", see 11 Colo. Law. 2795 (1982). For article, "A Practitioner's Guide for Entrance to NASD Membership", see 14 Colo. Law. 1967 (1985). For article, "Misstatements of the Rule Against Perpetuities by Experts", see 15 Colo. Law. 210 (1986). For article, "The Distinction Between a Financial Planner, Investment Advisor and Broker/Dealer", see 15 Colo. Law. 211 (1986).

**Annotator's note.** Since § 11-51-201 is similar to § 11-51-102 as it existed prior to the 1990 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

**The hallmark of state and federal securities regulation** has always been close attention to the facts of each case and a substantive ap-

praisal of the commercial realities of the offering. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Legislative intent.** Such expansive language in the Colorado statute defining "security" indicates a legislative intent to provide the flexibility needed to regulate the various schemes devised by those who seek the use of the money of others with the lure of profits. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976); *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).

**Purpose.** The broad purpose of securities acts is to prevent the exploitation of investors through full and fair disclosure relative to the issuance of securities. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Securities acts are remedial in nature and should be broadly construed** to effectuate their purpose. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976); *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).



**Parallels federal acts.** The Colorado securities act parallels the federal securities act of 1933 and the securities and exchange act of 1934. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

The definition of "security" in the federal securities act of 1933 (15 U.S.C. § 77b(1)) is parallel to Colorado's definition; "investment contract" is included as a "security" under both statutes; and, therefore, federal cases on the subject can be persuasive. *Raymond Lee Org., Inc. v. Div. of Sec.*, 192 Colo. 112, 556 P.2d 1209 (1976).

**The definition of a security embodies a flexible rather than a static principle.** *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Investment contract defined.** An investment contract for purposes of the securities act means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. *Raymond Lee Org., Inc. v. Div. of Sec.*, 192 Colo. 112, 556 P.2d 1209 (1976); *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).

The transaction's substance and economic realities control, not what a party labels the transaction. *Jenkins v. Jacobs*, 748 P.2d 1318 (Colo. App. 1987).

**Question of law.** Whether an interest or instrument is an investment contract is a question of law to be determined by the court. *Straub v. Mountain Trails Resort, Inc.*, 770 P.2d 1321 (Colo. App. 1988).

**Transaction found to be a security.** Whether a transaction is a security is a question of fact to be determined by the jury. *People v. Hoover*, 165 P.3d 784 (Colo. App. 2006).

It is the jury's responsibility to apply the facts to the definition of "security" supplied by the court to decide whether a particular transaction is a security. *People v. Pahl*, 169 P.3d 169 (Colo. App. 2006); *People v. Hoover*, 165 P.3d 784 (Colo. App. 2006).

The three-part test to determine if a transaction is an investment contract, included within the definition of "security", establishes whether such transaction is: (1) An investment of money; (2) in a common enterprise; (3) with the expectation of profit from the efforts of others. *People v. Hoover*, 165 P.3d 784 (Colo. App. 2006).

**Investment notes issued by loan association were securities** where each noteholder entrusted money with expectation of periodic interest in addition to repayment of principal, interest rates were raised periodically, investors' return was dependent upon continuing operation and success of business, and investor's expectation of profit was derived solely from managerial efforts of others. *People v. Milne*, 690 P.2d 829 (Colo. 1984).

**Commodity accounts may be investment contracts and thus securities.** In order to qualify as an investment contract, a commodity account must involve an investment of money in a common enterprise with profits to come solely from the efforts of others. *Clayton Brokerage Co. v. Stansfield*, 582 F. Supp. 837 (D. Colo. 1984).

**Pyramid sales scheme as a security.** A pyramid sales scheme is no less a security because of the sale of distributorships where what, in essence, was being offered was an opportunity to contribute money and to share in the profits of an enterprise managed and owned by Master Industries. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

A pyramid promotional scheme involved an "investment contract", a "common enterprise" whereby the "fortunes of the investors" were "inextricably tied" and dependent upon the efforts and success of the corporation in obtaining and recruiting new prospects for its seminars and in consummating sales, and constituted the sale of securities in violation of Colorado's securities act. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

**Promoters of pyramid promotional plans must make full, complete, and fair disclosure,** through the registration statement, of the perils involved before their prospects invest their money. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

**Agreements to promote inventions.** Agreements whereby an inventor paid a fee to petitioner and assigned a percentage interest in the invention or a fee plus a commission on any net proceeds received as a result of petitioner's efforts in exchange for certain promotional services were held not to be "securities". *Raymond Lee Org., Inc. v. Div. of Sec.*, 192 Colo. 112, 556 P.2d 1209 (1976).

The element of commonality was absent where no other inventor acquired any interest in, nor received any direct benefit from, a particular inventor's invention. *Raymond Lee Org., Inc. v. Div. of Sec.*, 192 Colo. 112, 556 P.2d 1209 (1976).

**The sale of condominium property, when accompanied by collateral agreements involving rental of the units,** did constitute the sale of a "security" within the meaning of the Colorado statute. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

The fact that a rental agreement imposed by an investment company selling condominiums was mandatory and exclusive as to all purchasers, and that the rental rate, supporting services, and promotion and allocation of renters were all controlled by a common agent, made the venture a "common enterprise" for the purpose of defining an investment contract. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

Despite the finding of a "secondary" purpose of personal recreational use, this subordinate motive for a purchase of a condominium did not sufficiently eclipse the plaintiffs' primary purpose of an "expectation of profit". *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Plaintiff's percentage interest in real estate venture met the statutory definitions of a security** contained in the securities acts, state and federal. *Andrews v. Blue*, 489 F.2d 367 (10th Cir. 1973).

**A contract to jointly purchase viatical settlements of life insurance policies is an investment contract and thus qualifies as a security.** A fund that invests in life insurance settlements and sells such investments is a security. *Joseph v. Viatica Mgmt., LLC*, 55 P.3d 264 (Colo. App. 2002).

**Jurisdiction.** Whether the contracts are executed in Colorado or out of state is irrelevant since the Colorado securities act expressly covers the solicitation of an offer to buy in this state, and actual execution of a contract within the state is not essential to the exercise of jurisdiction over appellant. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Selling of memberships in outdoor campground** did not involve an investment contract. *Straub v. Mountain Trails Resort, Inc.*, 770 P.2d 1321 (Colo. App. 1988).

**"Investment of money"**, for purposes of this section, means that the investor must commit his assets to an enterprise or venture in such a manner as to subject himself to a financial loss. *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).

**A common enterprise exists** when the fortunes of the investors are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties. *Griffin v. Jackson*, 759 P.2d 839 (Colo. App. 1988).

**Franchise agreement not a sale of a security.** *Mr. Steak, Inc. v. River City Steak, Inc.*, 342 F. Supp. 640 (D. Colo. 1970), aff'd and modified, 460 F.2d 666 (10th Cir. 1972).

**Applied in Sterling Recreation Org. Co. v. Segal**, 537 F. Supp. 1024 (D. Colo. 1982).

**11-51-201.5. Investment adviser registration depository - definition.** As used in this article, unless the context otherwise requires:

(1) "Investment adviser registration depository" means the electronic computer registration system known as the investment adviser registration depository that is operated and maintained by the national association of securities dealers and by the states that participate in such system, and the term includes any successor system.

**Source: L. 2001:** Entire section added, p. 15, § 1, effective March 9.

**11-51-202. References to federal statutes.** (1) Each reference in this article to a federal act or statute means, unless the context otherwise requires, that act or statute as in effect on January 1, 1990, together with all rules and regulations under such act or statute as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

(2) (a) Whenever an amendment to any federal act or statute to which reference is made in this article is enacted with an effective date on or after January 1, 1990, or whenever an amendment to any rule or regulation under any such federal act or statute is promulgated with an effective date on or after such date, the securities commissioner shall determine whether giving effect to such amendment is inconsistent with the purposes of this article set forth in section 11-51-101 (2), any other provision of this article, or any rule under this article. If the securities commissioner determines that an inconsistency exists, the securities commissioner shall commence rule-making proceedings for the purpose of making, amending, or rescinding such rules under this article as may be appropriate to carry out the policy stated in section 11-51-101 (3). If no rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall apply to this article and the rules under this article. If a rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall not apply to this article or any rule under this article except as may be provided by rule upon completion of such rule-making proceeding.

(b) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted by such person in good



faith and in conformity with the provisions of this article and the rules under this article, as in effect prior to the effective date of any amendment to any federal act or statute to which reference is made in this article or any amendment to any rule or regulation under any such federal act or statute during the period commencing upon the effective date of such amendment and ending on the date determined by the following:

(I) If no rule-making proceeding with respect to such amendment is commenced under this subsection (2) within ninety days after its effective date (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), ending on the ninetieth day after such effective date; or

(II) If such a rule-making proceeding is commenced within such period of ninety days, ending upon completion of such rule-making proceeding.

(3) Each reference in this article to the federal "Investment Advisers Act of 1940" means that act in effect on April 30, 1998, together with all rules and regulations under such federal act as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

**Source:** L. 90: Entire article R&RE, p. 706, § 1, effective July 1. L. 98: (3) added, p. 549, § 3, effective April 30.

**Cross references:** For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

### PART 3

#### REGISTRATION OF SECURITIES AND EXEMPTIONS

**11-51-301. Requirement for registration of securities.** It is unlawful for any person to offer to sell or sell any security in this state unless it is registered under this article or unless the security or transaction is exempted under sections 11-51-307, 11-51-308, or 11-51-309.

**Source:** L. 90: Entire article R&RE, p. 707, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-107 (1) as it existed prior to 1990.

**Cross references:** For the applicability of this section, see § 11-51-102 (1) and (7). For securities exempted from this section, see § 11-51-307.

#### ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**When all offerees have equal access to information, there is no need for registration.** *Lively v. Hirschfeld*, 308 F. Supp. 612 (D. Colo. 1970).

**This section and 15 U.S.C. § 77e are identical in thrust**, although the wording of the

federal statute is more comprehensive. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**Only a general intent, and not scienter, need be shown under a charge** of sale of unregistered securities. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**Applied** in *Lowery v. Ford Hill Inv. Co.*, 37 Colo. App. 260, 548 P.2d 127 (1976).

**11-51-302. General registration provisions.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a broker-dealer licensed or exempt under this article.

(2) Every registration statement filed under section 11-51-303 or 11-51-304 shall be

accompanied by a registration fee, which shall be determined and collected pursuant to section 11-51-707.

(3) Any document or portion thereof filed with the securities commissioner under this article or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in a registration statement to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any registration statement.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-51-304 that the proceeds from the sale of the registered security be held in escrow until the issuer receives a specified amount. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (5), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (5) is punishable pursuant to section 11-51-603 (2).

(6) (a) In the case of any offering registered under section 11-51-303 or 11-51-304 where less than seventy-five percent of the net proceeds from the sale of the registered securities are committed for use in one or more specific lines of business, eighty percent of the net proceeds received by the issuer shall be placed into escrow until:

(I) The completion of a transaction or series of transactions whereby at least fifty percent of the gross proceeds received from the sale of registered securities (including any amounts actually received by the issuer upon exercise of registered warrants or rights to purchase or subscribe to another security) are committed for use in one or more specific lines of business; and

(II) The lapse of no more than ten days after receipt by the securities commissioner of notice of the proposed release of funds from such escrow.

(b) Such notice must contain the information and be in the form the securities commissioner by rule requires. If an escrow is released and warrants or rights which were once registered remain outstanding, then this subsection (6) shall apply separately to the proceeds from any subsequent exercise of such warrants or rights. Proceeds received from the exercise of such warrants or rights shall then be subject to release upon the conditions stated in this subsection (6), and this subsection (6) shall then each time apply separately with respect to proceeds from the exercise of warrants or rights which were once registered and still remain outstanding. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (6), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (6), is punishable pursuant to section 11-51-603 (2). The securities commissioner may, by rule or order, waive the requirements of this subsection (6), in whole or in part, with respect to any class of registrations or any specific registration if the securities commissioner finds that such waiver is in the public interest and that compliance with the requirements of this subsection (6) is not necessary for the protection of investors.

(7) (a) Except as provided in paragraph (b) of this subsection (7), a registration statement filed and effective under section 11-51-303 is effective for one year after its effective date and thereafter is effective during the period or periods, but only those periods, when the prospectus contained in the registration statement filed under the federal "Securities Act of 1933" meets the requirements of subsection (a) of section 10 of such federal "Securities Act of 1933".

(b) (I) A registration statement filed and effective under section 11-51-303 or 11-51-304 on behalf of an investment company registered under the federal "Investment Company Act of 1940" is effective for one year after its effective date and may be renewed by filing a renewal notice with the securities commissioner.

(II) Any person filing a renewal notice pursuant to this paragraph (b) shall pay a renewal fee pursuant to section 11-51-707.

(c) A registration statement filed and effective under section 11-51-304 is effective for one year after its effective date unless the securities commissioner by rule or order extends the period of effectiveness.



(d) A registration statement effective under section 11-51-303 or 11-51-304 may be terminated or withdrawn upon the request of the issuer or the person who filed the registration statement and with the consent of the securities commissioner.

(e) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction or series of transactions while the registration statement is effective.

(8) So long as a registration statement under section 11-51-304 is effective, the securities commissioner may, by rule or order, require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(9) A registration statement under section 11-51-303 or 11-51-304 may be amended after its effective date so as to increase the quantity of securities specified as being offered. Every person filing such an amendment shall pay a registration fee, which shall be determined and collected pursuant to section 11-51-707, with respect to the additional securities being registered. Such an amendment becomes effective when the securities commissioner so orders. If the additional securities being registered have been sold before such amendment is filed and the person filing the amendment provides such information as the securities commissioner may request to show that the failure to register the additional securities prior to their sale was in good faith and not for the purpose of avoiding compliance with this article, the securities commissioner may by order provide that the effectiveness of the amendment shall relate back to the first date of sale of the additional securities.

**Source:** L. 90: Entire article R&RE, p. 707, § 1, effective July 1. L. 94: (7) amended, p. 1838, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-108 as it existed prior to 1990.

**Cross references:** For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940).

## ANNOTATION

**Law reviews.** For article, "Misstatements of the Rule Against Perpetuities by Experts", see 15 Colo. Law. 210 (1986). For article, "The Distinction Between a Financial Planner, Investment Advisor and Broker/Dealer", see 15 Colo. Law. 211 (1986).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**For registration requirement of persons conducting transactions even if the security**

**or underlying transaction is exempt**, see *People v. Milne*, 690 P.2d 829 (Colo. 1984).

**15 U.S.C. § 780 is roughly analogous to this section.** *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**Scienter is not an element of the charge of sale of securities without a license.** *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**11-51-303. Registration by coordination.** (1) Securities for which a registration statement has been filed under the federal "Securities Act of 1933" in connection with the offering of the securities may be registered by coordination. A registration statement and accompanying records shall be filed with the securities commissioner pursuant to this section and shall contain the following information and be accompanied by the consent to service of process required by section 11-51-706:

(a) A copy of the latest form of prospectus filed under the federal "Securities Act of 1933";

(b) (I) A current copy of the issuer's articles of incorporation and bylaws or, if so determined by the commissioner, the substantial equivalent of such articles of incorporation and bylaws;

(II) A copy of any agreement with or among the underwriters of the security to be registered;

(III) A copy of any indenture or other instrument governing the issuance of the security to be registered;

(IV) A specimen, copy, or description of the security that is required by rule promulgated by the securities commissioner or order issued pursuant to this article; and

(c) A copy of other information or records filed by the issuer under the federal "Securities Act of 1933" that may be requested by the securities commissioner.

(d) (Deleted by amendment, L. 2004, p. 512, § 1, effective July 1, 2004.)

(2) Any amendments to the federal prospectus shall be promptly filed with the securities commissioner after the amended prospectus is filed with the federal securities and exchange commission; except that an amendment to the prospectus that only delays the effective date of the registration statement shall not be filed with the securities commissioner.

(3) A registration statement required to be filed with the securities commissioner pursuant to this section shall be considered effective simultaneously with or subsequent to the federal registration statement when all of the following conditions are satisfied:

(a) A stop order under subsection (4) of this section or section 11-51-306, or issued by the federal securities and exchange commission, is not in effect and a proceeding is not pending against the issuer under section 11-51-410; and

(b) The registration statement has been on file with the securities commissioner for at least twenty days; except that the securities commissioner may establish, pursuant to rule or order, a period less than twenty days.

(4) The registrant shall promptly notify the securities commissioner of the date when the federal registration statement becomes effective and the content of any price amendment. The registrant shall promptly file the notice containing the price amendment with the securities commissioner. If the notice is not timely received, the securities commissioner may, without prior notice or hearing, issue a stop order, which shall retroactively deny the effectiveness of a registration statement or suspend the effectiveness of the registration statement until the registrant complies with the provisions of this section. The securities commissioner shall promptly notify the registrant of a stop order by telegram, telephone, or electronic means. The securities commissioner shall be able to confirm that notice of the stop order was given to the registrant. If the registrant subsequently complies with the notice requirements of this section, the stop order shall become void as of the date of its issuance.

(5) If the federal registration statement becomes effective before all of the conditions of this section are satisfied, or if a condition of this section is waived by the securities commissioner, the registration statement shall be effective when all of the conditions of this section are either satisfied or waived by the securities commissioner. If the registrant notifies the securities commissioner of the date when the federal registration statement is expected to become effective, the securities commissioner shall promptly notify the registrant by telegram, telephone, or electronic means whether all of the conditions of this section have been satisfied by the registrant or the securities commissioner is waiving one or all of the conditions. The securities commissioner shall also notify the registrant if the commissioner intends to institute a proceeding against the registrant pursuant to section 11-51-306. The securities commissioner shall be able to confirm that such notice was provided to the registrant. Failure of the securities commissioner to notify the registrant of the commissioner's intent to institute an action pursuant to section 11-51-306 shall not invalidate or preclude the institution of such action.

(6) The commissioner shall promulgate a rule that defines the prompt filing and notification provisions of this section.

**Source:** L. 90: Entire article R&RE, p. 709, § 1, effective July 1. L. 2004: Entire section amended, p. 512, § 1, effective July 1.

**Cross references:** For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.



**11-51-304. Registration by qualification.** (1) A security may be registered by qualification.

(2) A registration statement under this section shall contain full and fair disclosure of all material facts respecting the investment offered, including the following information, shall state the title of the security and the number or amount being registered under this article, and shall be accompanied by the following documents in addition to the consent to service of process required by section 11-51-706:

(a) With respect to the issuer, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, the name, address, and principal occupation for the past five years; the amount of securities of the issuer held as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(c) With respect to persons covered by paragraph (b) of this subsection (2), the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all such persons in the aggregate;

(d) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (b) of this subsection (2) other than the occupation;

(e) With respect to every promoter, if the issuer was organized within the past three years, the information specified in paragraph (b) of this subsection (2), any amount paid within that period or intended to be paid to that person, and the consideration for any such payment;

(f) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, the name and address, the amount of securities of the issuer held as of the date of the filing of the registration statement, a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected, and a statement of the person's reasons for making the offering;

(g) The capitalization and long-term debt on both a current and pro forma basis of the issuer, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion is to be made to any person or class of persons, other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; and the amounts of any funds to be raised; and, if any part of the proceeds is to be used to acquire any property including goodwill otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, and the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expenses in connection with the acquisition including the cost of borrowing money to finance the acquisition;

(j) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (d), (e), (f), or (h) of this subsection (2) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(k) The date of, parties to, and general effect concisely stated of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any litigation or proceeding known to be contemplated by governmental authorities;

(l) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of its effective date to be used in connection with the offering;

(m) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(o) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation other than a public and official document or statement which is used in connection with the registration statement;

(p) The balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the investment offered.

(3) A registration statement under this section becomes effective when the securities commissioner so orders or twenty-eight calendar days from the date of filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

(4) The securities commissioner may, by rule or order, require as a condition of registration under this section that an offering circular containing any designated part of the information specified in subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with: The first written offer made to such person otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made or by any broker-dealer or underwriter who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any person; or a payment made pursuant to any such sale or the delivery of the security pursuant to any such sale, whichever first occurs.



(5) The date of filing shall be the date that the registration statement or an amendment to the registration statement is received by the securities commissioner.

(6) The securities commissioner shall by rule prescribe a limited offering registration procedure for any offering of securities by an issuer if the issuer has its principal office and the majority of its full-time employees in Colorado; if the issuer provides in its offering document that at least eighty percent of the net proceeds from the offering shall be used in connection with the operations of such issuer in this state; if the gross proceeds from such offering of securities and any other offering of securities will not exceed one million dollars within any twelve-month period; and if the registration statement and offering documents for such limited offering contain the following:

(a) With respect to the issuer, its principal business address, and its form, state or foreign jurisdiction, and date of its organization;

(b) The general character and location of its business and a description of its physical properties and equipment;

(c) The name and address of every officer and director of the issuer and of every person occupying a similar status or performing similar functions, and for each such person, a brief description of their business experience within the last five years, a description of any transaction during the preceding year or any proposed transaction between any such persons and the issuer, and a description of any of the following events occurring within the last five years that are material to an evaluation of the offering:

(I) The filing of a petition in bankruptcy by or against, or the filing of a receivership action against, any such person personally or by or against any entity for which they served as officer, director, or in a similar status or function;

(II) Any conviction of any such person in a criminal proceeding, or the filing of any indictment, information, or criminal complaint against any such person (excluding traffic violations and other minor offenses); and

(III) Any order, judgment, or decree, not subsequently reversed, suspended, or vacated, against any such person entered by a court of competent jurisdiction or any federal or state regulatory authority involving the violation by such person of any federal or state securities law or in connection with any matter material to the offering, the issuer, or its business;

(d) The principal factors contributing to the risks of the enterprise, including, when applicable, the absence of an operating history of the issuer, the absence of profitable operations in recent periods, the nature of the business or proposed business in which the issuer will engage, and the absence of any previous market for the securities of the issuer;

(e) The amount of authorized and issued securities of the issuer;

(f) The kind and amount of securities to be offered, the proposed offering price, and the minimum and maximum amounts that will be raised in the offering;

(g) The name, address, and amount of compensation of any underwriter or broker-dealer to receive compensation in connection with the offering;

(h) The estimated proceeds to be received by the issuer from the offering and the purposes for which such proceeds are to be used;

(i) An unaudited balance sheet as of a date within four months of the filing of the registration statement and an unaudited profit and loss statement and analysis of surplus for the most recent fiscal year of the issuer and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's existence if less than one year; and

(j) The following legend prominently stated on the cover page of the offering document:

THESE SECURITIES ARE OFFERED PURSUANT TO A LIMITED OFFERING REGISTRATION WITH THE COLORADO DIVISION OF SECURITIES. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COLORADO DIVISION OF SECURITIES NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE STATE OF COLORADO HAS INSTITUTED THIS LIMITED OFFERING REGISTRATION PROCEDURE IN AN EFFORT TO SIMPLIFY AND EXPEDITE THE SMALL BUSINESS CAPITAL FORMATION PROCESS. INVESTORS ARE ENCOURAGED TO ASK QUESTIONS OF AND SEEK ADDITIONAL INFORMATION FROM THE ISSUER AND UNDERWRITER OF THESE SECURITIES.

(7) In the case of a registration by qualification under subsection (6) of this section, the securities commissioner may not require as a condition of registration under section 11-51-302 (5) that any of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering underwritten by a broker-dealer registered under the federal "Securities Exchange Act of 1934", or that more than thirty-five percent of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering not underwritten by such a broker-dealer.

(8) A registration statement under subsection (6) of this section becomes effective when the securities commissioner so orders or fourteen calendar days from the date of the filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

**Source:** L. 90: Entire article R&RE, p. 710, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-109 as it existed prior to 1990.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-22, codified at 15 U.S.C. sec. 78a et seq.

**11-51-305. Filing of sales literature.** The securities commissioner may, by rule or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, unless the security or the transaction is exempted by section 11-51-307, 11-51-308, or 11-51-309.

**Source:** L. 90: Entire article R&RE, p. 714, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-114 as it existed prior to 1990.

**Cross references:** For securities exempted from this section, see § 11-51-307.

#### ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

**Applied** in Brooks v. Land Drilling Co., 574

F. Supp. 1050 (D. Colo. 1983) (decided under § 11-51-114 as it existed prior to the 1990 repeal and reenactment of this article).

**11-51-306. Denial, suspension, or revocation of registration.** (1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement, if the securities commissioner finds violations of the escrow provisions in section 11-51-302 (5) or (6), or, in the case of any registration statement under section 11-51-304, if the securities commissioner finds that the order is in the public interest and that any one of the following grounds exists:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment under section 11-51-302 (9) as of its effective date, or any report under section 11-51-302 (8) contains any false or misleading statement in violation of section 11-51-502;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated, in connection with the offering, by the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer.



Notwithstanding any other provision of this article, the securities commissioner shall not issue any stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement on the grounds that the offering, when viewed on its merits as an investment, is unfair, unjust, or inequitable.

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; but the securities commissioner may not institute a proceeding against an effective registration statement under this paragraph (c) more than one year from the date of the order or injunction relied on, and the securities commissioner may not enter an order under this paragraph (c) on the basis of an order or injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

(1.5) With respect to a security sought to be registered pursuant to section 11-51-303, the securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the securities commissioner finds that there has been a failure to comply with section 11-51-303 (2).

(2) The securities commissioner may, by summary order under section 11-51-606 (3) (a), summarily postpone or suspend the effectiveness of a registration statement pending final determination of any proceeding under this section.

(3) No stop order may be entered under this section, except under subsection (2) of this section, without the provision to the issuer of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**Source:** L. 90: Entire article R&RE, p. 714, § 1, effective July 1. L. 94: (2) amended, p. 1839, § 2, effective July 1. L. 2004: (1.5) added, p. 514, § 2, effective July 1.

**Editor's note:** This section is similar to former § 11-51-112 as it existed prior to 1990.

**11-51-307. Exempt securities.** (1) The following securities are exempted from sections 11-51-301 and 11-51-305:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of any of them or any certificate of deposit for any of them;

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of any of them, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any depository institution organized under the laws of the United States or any depository institution organized and supervised under the laws of any state;

(d) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(e) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: Subject to the jurisdiction of the surface transportation board; a registered holding company under the federal "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; or regulated in respect of its issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(f) Any security listed or approved for listing upon notice of issuance on any national securities exchange registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78f, as amended, or any other security of the same issuer that is of a senior or substantially equal rank; any security called for by subscription rights or warrants so listed, designated, or approved; or any warrant or right to purchase or subscribe to any of them;

(g) Any security which is issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, or charitable purposes or as a chamber of commerce or trade or professional association and which is offered or sold to a bona fide constituent or member of such organization or association, if no direct or indirect commission or remuneration is paid in connection with the offer or sale of such security except to a licensed broker-dealer; or any security which is issued by any cooperative association engaged in the sale or production of electricity and regulated by the public utilities commission of this state;

(h) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(i) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(j) Any security issued by a cooperative association as defined in article 55 of title 7, C.R.S.; and

(k) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under the federal "Investment Company Act of 1940" if:

(I) (A) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the federal "Investment Advisers Act of 1940" or that is currently registered, and has been registered or is affiliated with an adviser that has been registered, as an investment adviser under the federal "Investment Advisers Act of 1940" for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k) and the adviser has acted, or is affiliated with an investment advisor that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k); or

(B) The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph (k) sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars; and

(II) There is filed with and paid to the securities commissioner prior to any sale of any securities claimed to be exempt under this paragraph (k):

(A) A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(B) An exemption fee, which shall be determined and collected pursuant to section 11-51-707, for open-end management companies and for unit investment trusts.

(2) Any notice filed and exemption fee paid under paragraph (k) of subsection (1) of this section shall be effective only for securities sold within twelve months after the date on which such notice was filed with the securities commissioner. For the purposes of paragraph (k) of subsection (1) of this section, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser. For the purposes of paragraph (k) of subsection (1) of this section, a "sponsor" of a unit investment trust means the person primarily responsible for the organization of the unit investment trust or who has continuing responsibilities for the administration of the affairs of the unit investment trust other than a trustee or custodian. "Sponsor" includes the depositor of the unit investment trust.

**Source:** L. 90: Entire article R&RE, p. 715, § 1, effective July 1. L. 2001: (1)(e) amended, p. 1267, § 7, effective June 5. L. 2008: (1)(f) amended, p. 21, § 10, effective August 5.



**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**Cross references:** For the "Public Utility Holding Company Act of 1935", see Pub.L. 74-333, codified at 15 U.S.C. sec. 79 et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Securities Registration Considerations in Condominium Developments", see 11 Colo. Law. 2795 (1982).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Parallels federal acts.** The Colorado securities act parallels the federal securities act of 1933 and the securities and exchange act of 1934. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

**The burden of proof** lies upon the party claiming an exemption. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**This section values information over mere disclaimers.** *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The crux of the registration requirement** is disclosure of information sufficient to allow informed decision-making by the investors as a class. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The mere fact that seller cautioned buyers** about the investment qualities of a purchase does not meet the degree of disclosure or access required by this section. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Applied in** *Brooks v. Land Drilling Co.*, 574 F. Supp. 1050 (D. Colo. 1983).

**11-51-308. Exempt transactions.** (1) The following transactions are exempted from sections 11-51-301 and 11-51-305:

- (a) Any isolated nonissuer transaction, whether or not effected through a broker-dealer;
- (b) Any nonissuer distribution of an outstanding security;
- (I) If a recognized securities manual contains the name of the issuer, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within the eighteen-month period immediately preceding the date of the distribution, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;
- (II) If the security has a fixed maturity or a fixed interest or dividend provision and there has been no default by the issuer during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividend on any security of the issuer;
- (III) If any class of securities of the issuer is registered under section 12 of the federal "Securities Exchange Act of 1934";
- (IV) If the issuer is an investment company registered under the federal "Investment Company Act of 1940"; or
- (V) If the issuer of the security has filed and maintained with the securities commissioner, for not less than ninety days next preceding the transaction, such information as the securities commissioner may specify by rule and has paid an exemption fee to be determined and collected as provided in section 11-51-707;
- (c) Any nonissuer transaction effected by or through a licensed broker-dealer pursuant to an unsolicited order or offer to buy, if either the confirmation of the transaction delivered to the customer clearly states that the transaction was unsolicited or the broker-dealer obtains a written acknowledgment signed by the customer that the transaction was unsolicited and a copy of the confirmation or the acknowledgment is preserved by the broker-dealer for such period as the securities commissioner may, by rule, require;
- (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;
- (e) Any transaction in a bond or other evidence of indebtedness secured by a mortgage, security interest, or deed of trust or by an agreement for the sale of real estate or chattels,

if the entire mortgage, security interest, deed of trust, or agreement together with all the bonds or other evidences of indebtedness secured thereby is offered and sold as a unit;

(f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) Any transaction executed by a bona fide pledgee without any purpose of evading the provisions of this article;

(h) Any offer or sale to a financial or institutional investor or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) Any transaction not involving any public offering;

(j) Any transaction pursuant to an offering of securities directed by the offeror to not more than twenty persons (other than those designated in paragraph (h) of this subsection (1)) in this state and sold to not more than ten buyers (other than those designated in paragraph (h) of this subsection (1)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees or buyers is then present in this state, if:

(I) The seller reasonably believes that all the buyers in this state (other than those designated in paragraph (h) of this subsection (1)) are purchasing for investment; and

(II) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (h) of this subsection (1)) except to a licensed broker-dealer or a licensed sales representative;

(k) Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, if the number of subscribers does not exceed twenty-five, and if no payment is made by any subscriber;

(l) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state except to a licensed or exempt broker-dealer;

(m) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration or offering statement or similar document as required under the federal "Securities Act of 1933" has been filed with the securities and exchange commission, but is not effective;

(II) A registration statement, if required, has been filed under section 11-51-303, but is not effective; and

(III) No stop order of which the offeror is aware has been entered by the securities commissioner or the securities and exchange commission;

(n) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration statement has been filed under section 11-51-304 but is not effective; and

(II) No stop order of which the offeror is aware has been entered by the securities commissioner;

(o) A transaction described in section 11-51-201 (13) (g); and

(p) Any offer or sale of a security in compliance with an exemption from registration with the securities and exchange commission under section 3(b) or 4(2) of the federal "Securities Act of 1933" pursuant to regulations adopted thereunder by the securities and exchange commission. The issuer shall file with the securities commissioner a notification of exemption, upon such form as the securities commissioner may prescribe, and pay an exemption fee to be determined and collected pursuant to section 11-51-707.

**Source:** L. 90: Entire article R&RE, p. 717, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.



**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 78-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.

## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Securities Registration Considerations in Condominium Developments", see 11 Colo. Law. 2795 (1982).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Parallels federal acts.** The Colorado securities act parallels the federal securities act of 1933 and the securities and exchange act of 1934. *Sauer v. Hays*, 36 Colo. App. 190, 539 P.2d 1343 (1975).

**The burden of proof** lies upon the party claiming an exemption. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**This section values information over mere disclaimers.** *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The crux of the registration requirement** is disclosure of information sufficient to allow informed decision-making by the investors as a class. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The mere fact that seller cautioned buyers** about the investment qualities of a purchase does not meet the degree of disclosure or access required by this section. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Design of private offering exemption.** The private offering exemption was designed principally to permit the issuance of securities in transactions in which the remedial purposes of registration were satisfied by independent factors. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Question of fact.** The test as to whether or not an offering is public is a question to be determined from the facts in each particular case. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Availability of nonpublic offering exemption in subsection (1)(i) is a question of fact.** *People v. Morrow*, 682 P.2d 1201 (Colo. App.,

1983).

**Each "offering" to be separately assessed.** To determine the public nature of an offering, the predicates for the exemption must apply to the offerees as a group and should not be analyzed on an investor-by-investor basis. Each "offering" must be separately assessed. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**The real test as to whether or not an offering is public** is whether the particular class of persons affected needs the information made available by registration. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Criteria for test.** As to the statutory test for determining whether an offering is private, criteria established by the Colorado division of securities include: (1) The number of offerees and actual purchasers; (2) the offeree's relationship to the issuer; (3) the offeree's knowledge; (4) the manner of the offering; (5) whether the offer is made in a medium intended for general distribution; and (6) a commitment by the offeree that the security is taken for investment only and not for resale or redistribution. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**When requirements for private offering exemption satisfied.** The requirements for private offering exemption are satisfied only if "each offeree . . . does not require the information which would be set forth in a registration statement". *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Securities were not exempt from registration requirements under subsection (1)(p)** where respondents engaged in a general solicitation and thus the offering was not conducted in accordance with rule 506 of regulation D promulgated under the federal Securities Act of 1933. *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727 (Colo. App. 2009).

**Applied** in *Brooks v. Land Drilling Co.*, 574 F. Supp. 1050 (D. Colo. 1983).

**11-51-309. Discretionary exemptions.** The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, from time to time add any securities to the securities exempted in section 11-51-307 or add any transactions to the transactions exempted in section 11-51-308, if the securities commissioner finds that the application of sections 11-51-301 and 11-51-305 to such securities or transactions is not necessary in the public interest and for the protection of investors.

**Source: L. 90:** Entire article R&RE, p. 719, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**11-51-310. Denial or revocation of exemptions.** (1) (a) The securities commissioner may, by order, deny or revoke the exemption specified in section 11-51-307 (1) (g) with respect to a specific security or transaction if the securities commissioner finds that such order is necessary in the public interest and for the protection of investors.

(b) The securities commissioner may, by summary order under section 11-51-606 (3) (b), summarily suspend the exemption specified in section 11-51-307 (1) (g) as to a specific security or issuer pending final determination of any proceeding under this subsection (1).

(2) The securities commissioner may, by rule or order, deny or revoke any exemption specified in section 11-51-308 (1) (i), (1) (j), and (1) (p) with respect to a specific security, transaction, issuer, or class of persons if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been convicted within ten years of any felony in connection with the purchase or sale of any security. Such ten years shall be any ten years prior to any offer or sale of a security for which such exemption would otherwise be available.

(3) No order under subsection (1) or (2) of this section may operate retroactively. No person may be considered to have violated section 11-51-301 or 11-51-305 by reason of any offer or sale effected after the entry of an order under subsection (1) or (2) of this section if that person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

**Source:** L. 90: Entire article R&RE, p. 720, § 1, effective July 1. L. 94: (1)(b) amended, p. 1839, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

#### ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Se-

curities Registration Considerations in Condominium Developments", see 11 Colo. Law. 2795 (1982).

**11-51-311. Coordination of exemptions.** In furtherance of the policy stated in section 11-51-101 (3), the exemptions under sections 11-51-307 to 11-51-309 shall be coordinated with exemptions for securities and transactions under the federal "Securities Act of 1933" so that an offering registered under the federal "Securities Act of 1933" shall be subject to registration by filing under this article in the absence of an exemption under this article and so that an offering exempt from registration under the federal "Securities Act of 1933", other than pursuant to the exemption for intrastate offerings, shall also be exempt from registration under this article. The securities commissioner shall make, amend, and rescind rules in order to effectuate such policy. Nothing in this section shall limit the powers or actions of the securities commissioner to make, amend, and rescind rules with regard to exemptions provided by sections 11-51-307 and 11-51-308 or added by section 11-51-309 but not contained in the federal "Securities Act of 1933" or rules and regulations thereunder.

**Source:** L. 90: Entire article R&RE, p. 720, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**Cross references:** For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.



## PART 4

LICENSING AND REGULATION OF  
BROKER-DEALERS AND SALES REPRESENTATIVES

**11-51-401. Licensing and notice filing requirements.** (1) A person shall not transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under section 11-51-402.

(1.5) A person with a place of business in this state shall not transact business in this state as an investment adviser or investment adviser representative unless such person is licensed as such or exempt from licensing under section 11-51-402.

(1.6) A federal covered adviser either with a place of business in this state or who employs or otherwise engages an individual with a place of business in this state to act as an investment adviser representative shall not transact business in this state as a federal covered adviser unless such adviser has filed with the securities commissioner the notice and fee required in sections 11-51-403 and 11-51-404.

(2) Neither a broker-dealer nor an issuer shall employ or otherwise engage an individual to act as a sales representative in this state unless the sales representative is licensed or exempt from licensing under section 11-51-402.

(2.5) An investment adviser shall not employ or otherwise engage any individual with a place of business in this state to act as an investment adviser representative in this state unless such individual is licensed in accordance with section 11-51-403 or is exempt from licensing under section 11-51-402 (1).

(3) No broker-dealer, investment adviser, or issuer shall employ or otherwise engage a person to participate in any activity in this state contrary to an order by the securities commissioner applicable to that person under section 11-51-410. A broker-dealer, investment adviser, or issuer does not violate this subsection (3) if the broker-dealer, investment adviser, or issuer sustains the burden of proof that it did not know and in the exercise of reasonable care could not have known of the order. Upon request from a broker-dealer, investment adviser, or issuer and for good cause shown, the securities commissioner may waive the prohibition of this subsection (3) with respect to a person subject to an order under section 11-51-410.

(4) No person shall act as an investment adviser for a local government investment pool trust fund under article 75 of title 24, C.R.S., unless the person has first notified the securities commissioner by filing the form prescribed by the securities commissioner.

**Source:** L. 90: Entire article R&RE, p. 720, § 1, effective July 1. L. 98: (1.5), (1.6), (2.5), and (4) added and (3) amended, p. 550, § 4, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-105 as it existed prior to 1990.

**Cross references:** For provisions concerning the use of the term "transacting business in this state" in subsections (1.5), (1.6), and (2.5) of this section, see § 11-51-102 (8); for the applicability of subsections (1) and (2), see § 11-51-102 (1) and (2).

## ANNOTATION

**Law reviews.** For article, "Dodd Frank Act Expands Federal and State Regulation of Investment Advisers", see 40 Colo. Law. 15 (February 2011).

**Approval or acceptance of the sale of a security is not a necessary element of whether a person is acting as a sales representative.** A

person who facilitated all aspects of the investment other than the formal acceptance of the agreement is acting as a sales representative. Thus, the person is required to have a license. *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727 (Colo. App. 2009).

**11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives.** (1) The following broker-dealers are exempt from the license requirement of 11-51-401 (1):

(a) A broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" and has no place of business in this state if the business transacted in this state as a broker-dealer is exclusively with the following:

- (I) Issuers in transactions involving their own securities;
- (II) Other broker-dealers licensed or exempt from licensing under this article, except when the broker-dealer is acting as a clearing broker-dealer for such other broker-dealers;
- (III) Financial or institutional investors;
- (IV) Individuals who are existing customers of the broker-dealer and whose principal places of residence are not in this state;
- (V) During any twelve consecutive months, not more than five persons in this state, excluding persons described in subparagraphs (I) to (IV) of this paragraph (a); and
- (b) Other broker-dealers the securities commissioner by rule or order exempts.

(2) The following sales representatives are exempt from the license requirement of section 11-51-401 (1):

(a) A sales representative employed or otherwise engaged by a broker-dealer exempt under subsection (1) of this section;

(b) A sales representative employed or otherwise engaged by an issuer in effecting transactions only in securities exempted by section 11-51-307 (1) (a) to (1) (d) or (1) (j);

(c) A sales representative employed by an issuer in effecting transactions only with employees, partners, officers, or directors of the issuer or of a parent or subsidiaries of the issuer, if no commission or other similar compensation is paid or given directly or indirectly to the sales representative for soliciting an employee, partner, officer, or director in this state; and

(d) Other sales representatives the securities commissioner by rule or order exempts.

(3) Any real estate broker or salesman licensed pursuant to part 1 of article 61 of title 12, C.R.S., who is trading only in securities comprised of notes, bonds, or evidences of indebtedness secured by mortgages or deeds of trust upon real estate, where the broker or salesman acts as the agent for the buyer or seller of the real estate securing the note, bond, or evidence of indebtedness being traded and is neither the issuer nor affiliated with or under the direct or indirect control of the issuer or an affiliate of the issuer of the note, bond, or evidence of indebtedness, is exempt from the license requirement of section 11-51-401 (1).

(4) (a) The securities commissioner may by order revoke, suspend, or impose conditions upon exemptions available pursuant to subparagraph (III) of paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section if the securities commissioner finds that a broker-dealer or sales representative who has an exemption pursuant to either of said sections offered or sold, other than in an unsolicited transaction, to a public entity in the state of Colorado a financial instrument that such broker-dealer or sales representative knew or should have known does not qualify for sale to the public entity pursuant to section 24-75-601.1, C.R.S., and that such action by the securities commissioner is in the public interest.

(b) Any proceeding concerning an order made pursuant to this subsection (4) shall be conducted as a proceeding under section 11-51-606 (1), (2), (4), and (5).

(5) The following investment advisers with no place of business in this state are exempt from the license requirement of section 11-51-401 (1.5):

(a) An investment adviser who:

(I) Is exempt from registration as an investment adviser pursuant to section 203 (b) of the federal "Investment Advisers Act of 1940";

(II) Has only clients in this state that are: Other investment advisers; federal covered advisers; broker-dealers; depository institutions; insurance companies; employee benefit plans with assets of not less than one million dollars; or other institutional investors other than any local government investment pool trust fund under article 75 of title 24, C.R.S., as are designated by rule or order of the securities commissioner; or

(III) During the preceding twelve-month period, has had not more than five clients other than those specified in subparagraph (II) of this paragraph (a).

(b) The commissioner may by rule or order exempt other investment advisers from the license requirement of section 11-51-401 (1.5).



(6) Investment adviser representatives employed by or otherwise associated with an investment adviser exempt under subsection (5) of this section are exempt from the license requirement of section 11-51-401 (1.5).

**Source:** **L. 90:** Entire article R&RE, p. 721, § 1, effective July 1. **L. 95:** (4) added, p. 773, § 2, effective May 24. **L. 98:** (5) and (6) added, p. 550, § 5, effective January 1, 1999. **L. 99:** (6) amended, p. 619, §10, effective August 4. **L. 2003:** (3) amended, p. 1988, § 23, effective May 22.

**Editor's note:** This section is similar to former § 11-51-105 as it existed prior to 1990.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

## ANNOTATION

**Law reviews.** For article, "Dodd Frank Act Expands Federal and State Regulation of Investment Advisers", see 40 Colo. Law. 15 (February 2011).

**11-51-403. Application for license - notice filing requirements.** (1) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall file with the securities commissioner or with the securities commissioner's designee an application for a license and the consent to service of process required by section 11-51-706. The application shall contain the information and be in the form the securities commissioner requires by rule. If the information contained in an application is inaccurate or incomplete in any material respect when the application is filed or becomes inaccurate or incomplete in any material respect as a result of any subsequent event, the applicant shall promptly file an amendment to the application to cure the inaccuracy or omission. The securities commissioner may require an applicant to submit additional information that is material to an understanding of information about the applicant available to the securities commissioner in the application or otherwise, and an application shall be incomplete until all additional information required by the securities commissioner has been submitted.

(2) The application requirement of subsection (1) of this section for broker-dealers and sales representatives is satisfied by an applicant who has filed and maintains complete and current registration information with the securities and exchange commission, in the case of a broker-dealer, or a self-regulatory organization, in the case of a sales representative, if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the central registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the broker-dealer or sales representative that is provided to the securities commissioner through the central registration depository.

(2.5) The application requirement of subsection (1) of this section for an investment adviser and an investment adviser representative is satisfied by an applicant who has filed and maintains complete and current registration information with the investment adviser registration depository if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the investment adviser registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the investment adviser or investment adviser representative that is provided to the securities commissioner through the investment adviser registration depository.

(3) (a) A federal covered adviser who, during any calendar year, either has a place of business in this state or employs or engages an investment adviser representative with a place of business in this state shall file with the securities commissioner annually a consent

to service of process and such documents as are filed by such adviser with the securities and exchange commission that the commissioner may require by rule or order.

(b) The notice filing requirement described in paragraph (a) of this subsection (3) does not apply to any federal covered adviser who, during such calendar year, neither has a place of business in this state nor employs nor engages an investment adviser representative with a place of business in this state.

(c) A notice filing under this section shall be effective from its receipt by the securities commissioner until December 31 of each year. Thereafter, it may be renewed annually until the following December 31 by filing with the securities commissioner a copy of such documents as are required pursuant to paragraph (a) of this subsection (3) and payment of a fee pursuant to section 11-51-404.

(4) Any person required to pay a fee under this section may transmit through any designee of the securities commissioner any fee required by this section or by rules promulgated under this section.

**Source:** L. 90: Entire article R&RE, p. 722, § 1, effective July 1. L. 98: Entire section amended, p. 551, § 6, effective April 30. L. 2001: (1) amended and (2.5) and (4) added, p. 15, § 2, effective March 9.

**11-51-404. License and notice fees.** (1) (a) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall pay an initial license fee and a licensed person shall pay an annual license fee which shall be determined and collected pursuant to section 11-51-707; except that no such license fee for a sales representative or investment adviser representative shall be more than twenty-five dollars.

(b) A federal covered adviser required to file an annual notice with the securities commissioner pursuant to section 11-51-403 (3) (a) shall pay an annual notice fee that shall be determined and collected pursuant to section 11-51-707.

(2) If an annual license fee is not paid within ninety days after the application is filed, the securities commissioner may deem the application to be withdrawn.

(3) (a) (I) If an annual license or notice fee is not paid within thirty days after the securities commissioner sends a written notice that the fee was not paid when due, the amount of the annual license fee shall be double the amount originally payable.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, written notice is deemed sent when the notice is sent to the broker-dealer, investment adviser, or federal covered adviser.

(III) In the case of a sales representative, written notice is deemed sent to the sales representative when the notice is sent to a broker-dealer or an issuer for whom the sales representative is licensed to act.

(IV) In the case of an investment adviser representative, written notice is deemed sent when the notice is sent to the investment adviser or federal covered adviser for whom the investment adviser representative is licensed to act.

(b) (I) If an annual license or notice fee is not paid within sixty days after the securities commissioner sends the written notice described in paragraph (a) of this subsection (3), the securities commissioner may by order summarily suspend the license or, in the case of a federal covered adviser, the authority to do business in this state.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, the securities commissioner shall send a copy of the order to the broker-dealer, investment adviser, or federal covered adviser whose license or authority to do business in this state has been summarily suspended.

(III) In the case of a sales representative who has been licensed to act for a broker-dealer or an issuer and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to a broker-dealer or an issuer for whom the sales representative has been licensed to act.

(IV) In the case of an investment adviser representative who has been licensed to act for an investment adviser or federal covered adviser and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to the investment



adviser or federal covered adviser for whom the investment adviser representative has been licensed to act.

(4) If the annual license or notice fee is not paid within thirty days after the effective date of an order of summary suspension, the securities commissioner may by order summarily revoke the license or authority to do business in this state on the grounds that the license or authority has been abandoned.

(5) If an application is denied or withdrawn, or a license or authority to do business in this state is abandoned, revoked, suspended, or withdrawn, the securities commissioner shall retain all fees paid.

**Source:** L. 90: Entire article R&RE, p. 722, § 1, effective July 1. L. 98: Entire section amended, p. 552, § 7, effective April 30.

**Editor's note:** This section is similar to former § 11-51-106 as it existed prior to 1990.

**11-51-405. Examinations and alternate qualifications.** (1) In the case of a license as a broker-dealer, if the applicant is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934", the securities commissioner may by rule require the successful completion of a standardized written examination by any individual who will have primary responsibility to supervise any licensed sales representative of the broker-dealer. In the case of an application for a license as a sales representative to act for a broker-dealer who is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or to act for an issuer, the securities commissioner may by rule require the successful completion of a standardized written examination by the applicant. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(2) An applicant for a license as a broker-dealer or sales representative who is a licensed real estate broker or salesman pursuant to part 1 of article 61 of title 12, C.R.S., and whose securities activities in this state are limited to trading in securities comprised of notes, bonds, or other evidences of indebtedness secured by mortgages or deeds of trust upon real estate shall be excused from any examination requirement under subsection (1) of this section.

(3) In the case of a license as an investment adviser representative, the securities commissioner may by rule require the successful completion of one or more standardized written examinations. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(4) The securities commissioner may by rule designate other qualifications and credentials that will be accepted in lieu of meeting the examination requirement set forth in subsection (3) of this section.

**Source:** L. 90: Entire article R&RE, p. 723, § 1, effective July 1. L. 98: (3) and (4) added, p. 553, § 8, effective January 1, 1999. L. 2003: (2) amended, p. 1989, § 24, effective May 22.

**Editor's note:** This section is similar to former § 11-51-106 (2.1) as it existed prior to 1990.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

**11-51-406. General provisions.** (1) (a) Unless a proceeding under section 11-51-410 is instituted, the license of a broker-dealer, sales representative, or investment adviser representative becomes effective upon the last to occur of the following:

(I) The passage of thirty days after the filing of the application or, in the event any amendment is filed before the license becomes effective, the passage of thirty days after the

filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

(II) The examination requirement under section 11-51-405 is satisfied;

(III) In the case of a broker-dealer, the requirements of section 11-51-407 are satisfied; and

(IV) The required fee has been paid.

(b) The securities commissioner may authorize an earlier effective date of licensing.

(c) A notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of the documents and fee required to be filed pursuant to sections 11-51-403 and 11-51-404.

(2) The securities commissioner may by rule or order, waive or reduce any of the requirements of this section and sections 11-51-405 and 11-51-407 with respect to any person or class of persons and, in connection with the waiver or reduction of any requirement, may limit or impose conditions on the securities activities that such person or class of persons may conduct in this state.

(3) (a) The license of a sales representative is effective only with respect to actions taken for a broker-dealer or issuer for whom the sales representative is licensed.

(b) The license of an investment adviser representative is effective only with respect to actions taken for an investment adviser or federal covered adviser with whom such investment adviser representative is employed or otherwise associated with as shown in the most current information filed by or on behalf of such representative pursuant to section 11-51-403 or 11-51-407 (3).

(4) (a) A person may act as a sales representative for more than one broker-dealer or issuer.

(b) A person may act as an investment adviser representative for more than one investment adviser or federal covered adviser and may also act as an investment adviser representative and a sales representative.

(5) (a) If a licensed sales representative ceases to be employed or otherwise engaged by a broker-dealer or issuer or ceases to act as a sales representative, the broker-dealer or, in the case of a sales representative licensed to act for an issuer, the sales representative shall promptly notify the securities commissioner. A notification required by this subsection (5) may be given by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" by filing the information through the central registration depository.

(b) If a licensed investment adviser representative ceases to be employed or otherwise engaged by an investment adviser or federal covered adviser or ceases to act as an investment adviser representative, the investment adviser or federal covered adviser shall promptly notify the securities commissioner.

(6) The license of a broker-dealer, sales representative, or investment adviser representative is effective until terminated by revocation or withdrawal.

**Source:** L. 90: Entire article R&RE, p. 723, § 1, effective July 1. L. 98: IP(1)(a), (3), (4), (5), and (6) amended and (1)(c) added, p. 554, § 9, effective January 1, 1999.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

**11-51-407. Operating requirements.** (1) (a) The securities commissioner may by rule require licensed broker-dealers who are not registered under the federal "Securities Exchange Act of 1934":

(I) To satisfy specified minimum financial responsibility requirements;

(II) To file with the securities commissioner specified financial and other information;

(III) To make and maintain specified records and to preserve such records for five years or such other period as may be specified;

(IV) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article; and



(V) To acquire and keep in force a fidelity bond in such minimum amount and covering such risks as may be specified.

(b) The securities commissioner may by rule require licensed investment advisers whose principal office and place of business is in this state, and licensed investment advisers whose principal office and place of business is not in this state but that is either not licensed in the state where it maintains its principal office and place of business or not in compliance with such state's financial operating requirements or books and records requirements:

(I) To file with the securities commissioner specified financial and other information;

(II) To make and maintain specified records and to preserve such records for five years or such other period as may be specified; and

(III) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article.

(c) If a broker-dealer or investment adviser at any time knows, or has reason to know, that it is not in compliance with any rule made by the securities commissioner under this subsection (1), the broker-dealer or investment adviser shall promptly notify the securities commissioner of all relevant facts.

(2) The securities commissioner may by rule require licensed broker-dealers who are registered under the federal "Securities Exchange Act of 1934" to make, maintain, and preserve specified records, but no rule made by the securities commissioner under this subsection (2) shall require any broker-dealer to make, maintain, or preserve any records other than those required to be made, maintained, and preserved under the federal "Securities Exchange Act of 1934".

(3) (a) Every licensed broker-dealer, licensed investment adviser, and every licensed sales representative shall file with the securities commissioner such information as may be necessary to correct any information in that person's application for license that is or has become inaccurate in any material respect. The requirements of this subsection (3) may be satisfied by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or by a sales representative licensed to act for such a broker-dealer by filing the correcting information through the central registration depository.

(b) A federal covered adviser who has filed the notice described in section 11-51-403 shall file with the securities commissioner a copy of each amendment filed by such adviser with the securities and exchange commission at the time such amendment is filed with the securities and exchange commission.

(4) Every licensed broker-dealer who is not registered under the federal "Securities Exchange Act of 1934" shall at all times have in its employment one or more individuals who have passed the written examination required under section 11-51-405 for individuals with supervisory responsibility. Every licensed investment adviser shall at all times have one or more individuals employed or otherwise associated with the investment adviser designated as having supervisory responsibilities over the investment adviser representatives of such adviser. Such individual or individuals shall have primary responsibility to supervise all of the licensed sales representatives of the broker-dealer, or all of the licensed investment adviser representatives of the investment adviser, as the case may be, and, for the purposes of section 11-51-410, each such individual who is not a partner, officer, or director of the broker-dealer or investment adviser shall be deemed a person occupying a similar status or performing similar functions as a partner, officer, or director. A broker-dealer or investment adviser who is not in compliance with this subsection (4) shall promptly notify the securities commissioner of all relevant facts.

(5) No investment adviser with its principal office and place of business in this state or investment adviser representative of a licensed investment adviser with a place of business in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:

(a) All of the securities of each client are segregated, marked to identify the particular client with any beneficial interest therein, and held in safekeeping in some place reasonably free from risk of loss, damage, or destruction; and

(b) (I) All of the funds of each client are deposited in one or more accounts, containing only clients' funds, at a depository institution; and

(II) Each account is maintained in the name of the investment adviser or a federal covered adviser as agent or trustee for such clients; and

(III) A separate record is maintained for each such account that shows the name and address of the depository institution where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account; and

(c) Written notification is sent to the client giving the place and manner in which the client's funds or securities will be maintained immediately after the investment adviser or investment adviser representative accepts custody or possession of such funds or securities from the client and thereafter, if and when there is any change in the place or manner, written notification is sent to the client explaining the change; and

(d) An itemized statement is sent to each client, at least once every three months, that shows the client's funds and securities in the custody or possession of the investment adviser or investment adviser representative at the end of the period and all debits, credits, and transactions affecting the funds and securities during the period; and

(e) A certified public accountant or, with the prior written consent of the client, a public accountant verifies all funds and securities of clients at least once during each calendar year through an actual examination. Such examination shall be at a time chosen by the accountant without prior notice to the investment adviser or investment adviser representative. The investment adviser shall file with the securities commissioner promptly after each such examination a certificate from the accountant in which such accountant avers to the commissioner that the accountant has performed an examination of the funds and securities accounts, and in which the accountant describes the nature and extent of the examination, and the results and conclusions reached.

(f) The investment adviser or investment adviser representative who has custody of client funds or securities posts bonds in amounts and with conditions the securities commissioner may by rule prescribe, subject to the limitations of section 222 (c) of the federal "Investment Advisers Act of 1940". Any equivalent deposit of cash or securities shall be accepted in lieu of any bonds so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 11-51-604 (3) and (5).

**Source:** L. 90: Entire article R&RE, p. 724, § 1, effective July 1. L. 98: (1), (3), and (4) amended and (5) added, p. 555, § 10, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-110 as it existed prior to 1990.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

**11-51-408. Licensing of successor firms.** (1) (a) A licensed broker-dealer or investment adviser may file an application for a license on behalf of a successor, whether or not the successor is in existence. If a broker-dealer or investment adviser succeeds to and continues the business of a licensed broker-dealer or investment adviser and the successor files an application for a license within thirty days after the succession, the license of the predecessor remains effective as the license of the successor for sixty days after the succession. An application filed pursuant to this subsection (1) must satisfy all requirements of an application under this article.

(b) A federal covered adviser may file a notice on behalf of a successor, whether or not the successor is in existence.

(2) If a successor is licensed or authorized to do business in this state pursuant to subsection (1) of this section, the license of each sales representative or investment adviser representative licensed to act for the predecessor shall remain effective as a license to act for the successor without a separate filing or payment of a separate fee.

**Source:** L. 90: Entire article R&RE, p. 725, § 1, effective July 1. L. 98: Entire section amended, p. 558, § 11, effective January 1, 1999.



**11-51-409. Access to records.** (1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed broker-dealer or investment adviser that are required to be made and maintained pursuant to this article in order to determine compliance with this article. A licensed broker-dealer or investment adviser may maintain such records in any form of data storage if the records are readily accessible to the securities commissioner in legible form.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy records required to be made and maintained under this article or require a licensed broker-dealer or investment adviser, at the expense of the broker-dealer or investment adviser, to copy such records and provide copies to the securities commissioner.

(3) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed sales representative or investment adviser representative that are made and maintained by the sales representative or investment adviser representative in the normal course of business in order to determine compliance with this article.

(4) The securities commissioner, in a manner reasonable under the circumstances, may copy records made and maintained by a licensed sales representative or investment adviser representative in the normal course of business or require a licensed sales representative or investment adviser representative, at the sales representative's or investment adviser representative's expense, to copy such records and provide copies to the securities commissioner.

**Source:** L. 90: Entire article R&RE, p. 725, § 1, effective July 1. L. 98: Entire section amended, p. 558, § 12, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-110 as it existed prior to 1990.

**11-51-409.5. Mandatory disclosure - investment advisers and investment adviser representatives.** (1) Each investment adviser and investment adviser representative of a licensed investment adviser shall furnish a written disclosure statement to each prospective client and to each client who is to receive investment advisory services. Such statement shall, at a minimum, contain the information the securities commissioner by rule requires to be furnished to clients or prospective clients by an investment adviser and an investment adviser representative. In the interests of uniformity, the requirements for disclosure of information under such rules should be coordinated and consistent with those that would be imposed under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the requirements of other states, unless the securities commissioner makes the specific finding that to do so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(2) The disclosure statement described in subsection (1) of this section shall be delivered before the client or prospective client incurs any obligation for or in connection with the investment advisory services. In addition, the investment adviser or investment adviser representative shall annually deliver or offer to deliver without charge upon written request of each client a true copy of the most recently available disclosure statement.

**Source:** L. 98: Entire section added, p. 559, § 13, effective January 1, 1999.

**Cross references:** For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

**11-51-410. Denial, suspension, or revocation.** (1) The securities commissioner may by order deny an application for a license, suspend or revoke a license, censure a licensed person, limit or impose conditions on the securities activities that a licensed person may conduct in this state, and bar a person from association with any licensed broker-dealer, investment adviser, or federal covered adviser in the conduct of its business in this state in

such capacities and for such period as the order specifies. These sanctions may be imposed only if the securities commissioner makes a finding, in addition to the findings required by section 11-51-704 (2), that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, a partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for a license with the securities commissioner that, as of the effective date of the license or as of any date after filing in the case of an order denying effectiveness, was false or misleading as a result of an untrue statement of a material fact or an omission to state a material fact, unless the applicant sustains the burden of proof that the applicant did not know and in the exercise of reasonable care could not have known of the untruth or omission;

(b) Has willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, except any rule that is subject to the additional findings required by paragraph (g) of this subsection (1);

(c) Within the past ten years, has entered a plea of guilty or nolo contendere to, or has been convicted of, any felony, any misdemeanor involving a breach of fiduciary duty or fraud, or any misdemeanor in connection with a purchase or sale of a security;

(d) Is subject to a temporary or permanent injunction issued by a court of competent jurisdiction in an action instituted by the securities commissioner, the securities agency or administrator of another state or a foreign jurisdiction, the securities and exchange commission, or the commodity futures trading commission, for violating any securities registration or broker-dealer, investment adviser, federal covered adviser, or similar license requirement in any federal, state, or foreign law or for engaging in fraudulent conduct;

(e) Is currently the subject of an order of the securities commissioner denying, suspending, or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative or barring the person from association with any licensed broker-dealer, investment adviser, or federal covered adviser;

(f) Is currently the subject of any of the following orders issued within the past five years:

(I) An order by the securities agency or administrator of another state or a foreign jurisdiction, entered after notice and opportunity for hearing and based upon fraudulent conduct, denying or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative, or the substantial equivalent of those terms, or suspending or barring the right of the person to be associated with a broker-dealer, investment adviser, or federal covered adviser;

(II) An order by the securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a broker-dealer under the federal "Securities Exchange Act of 1934" or as an investment adviser under the federal "Investment Advisers Act of 1940" or suspending or barring the right of the person to be associated with a broker-dealer or investment adviser;

(III) An order by the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking registration under the federal "Commodity Exchange Act"; or

(IV) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(g) Has willfully engaged in a course of conduct involving the violation of one or more rules made by the securities commissioner that prohibit unfair and dishonest dealings by a broker-dealer or sales representative, including any rule that may be made to define conduct prohibited by section 11-51-501, if each such rule is based upon a finding, in addition to the findings required by section 11-51-704 (2), which finding itself must be based on information provided by broker-dealers and sales representatives at a hearing on the proposed rule, that licensed broker-dealers and sales representatives who will be required to comply with the rule generally agree that the conduct prohibited by the rule does not meet prevailing standards of fair and honest dealing within the securities industry and that it is reasonable to expect the rule will prevent or deter such conduct;



(h) In the case of a broker-dealer who is not registered under the federal "Securities Exchange Act of 1934", is not in compliance with of section 11-51-407 (4);

(i) Has failed reasonably to supervise, with a view to preventing violations of this article, another person who is subject to the person's supervision and who commits such a violation, but for the purpose of this paragraph (i) no person shall be deemed to have failed to supervise another person if there existed established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and such person reasonably discharged the duties and obligations incumbent upon such person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

(j) Has ceased to do business as a broker-dealer, investment adviser, sales representative, or investment adviser representative;

(k) Has offered or sold to a public entity in the state of Colorado a financial instrument that such person knew or should have known does not qualify for sale to the public entity under section 24-75-601.1, C.R.S.;

(l) In the case of an investment adviser or investment adviser representative, willfully has:

(I) Failed to provide a client with a written disclosure statement as required pursuant to section 11-51-409.5; or

(II) Engaged in conduct contrary to one or more rules wherein the securities commissioner prohibits dishonest or unethical conduct in connection with providing investment advisory services. This subparagraph (II) applies to an investment adviser representative employed by or affiliated with a federal covered adviser only to the extent permitted under the federal "National Securities Markets Improvement Act of 1996". In the interests of uniformity, any rules promulgated pursuant to this subparagraph (II) shall be coordinated and consistent with the regulation of federal covered advisers by the securities and exchange commission under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the rules of other states regarding such conduct by investment advisers and investment adviser representatives, unless the securities commissioner makes the specific finding that to do so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(m) After notice and opportunity for a hearing, has been found within the previous ten years:

(I) By a court with jurisdiction, to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(II) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, sales representative, investment adviser, investment adviser representative, or similar person; or

(III) To have been suspended or expelled from membership or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction; or

(n) (I) Is not qualified because of training, experience, or knowledge of the securities business; except that in the case of an applicant who is a sales representative for a broker-dealer that is a member of a self-regulatory organization or for an individual as an investment adviser representative, a denial order may not be based on this paragraph (n) if the applicant has successfully completed all examinations required by this article.

(II) The securities commissioner may require an applicant for a license pursuant to section 11-51-403, who has not been registered or licensed in any state within the two years preceding the filing of an application in this state, to successfully complete an examination.

(2) The securities commissioner may not begin a proceeding under this section against any person more than ninety days after a license has been issued to that person on the basis of a fact or transaction which the person shows was known to the securities commissioner when the license was issued or when any prior license of the same class was issued to that

person if such prior license was not revoked on the basis, in whole or in part, of such fact or transaction.

(3) For good cause shown the securities commissioner may waive or modify an order previously made under this section as it applies to any person with the consent of that person.

(4) The securities commissioner may suspend the license of a licensee pursuant to a summary order issued under section 11-51-606 (4) and such order shall be valid pending a final determination in any proceeding brought pursuant to this section subject to any modification made to such order under section 11-51-606 (4) (c).

(5) Where a person is an applicant for a license, or is licensed by the securities commissioner in more than one capacity, or both, and one or more grounds for sanction as set forth in subsection (1) of this section as they may apply to one application, license, or association with a broker-dealer, investment adviser, or federal covered adviser has been established either by findings of fact and conclusions of law or alleged before the securities commissioner on stipulation, the securities commissioner may impose one or more of such sanctions not only regarding the application, license, or association giving rise to the matter, but also upon any other application, license, or association under this section if the securities commissioner makes the additional findings that to do so is necessary and appropriate in the public interest and for the protection of investors.

**Source:** L. 90: Entire article R&RE, p. 726, § 1, effective July 1. L. 94: (1)(d) and (1)(f)(I) amended and (4) added, p. 1839, § 4, effective July 1. L. 95: (1)(i) and (1)(j) amended and (1)(k) added, p. 774, § 3, effective May 24. L. 98: (1) amended and (5) added, p. 559, § 14, effective January 1, 1999. L. 2004: (1)(m) and (1)(n) added, p. 515, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-51-111 as it existed prior to 1990.

**Cross references:** For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "National Securities Markets Improvement Act of 1996", see Pub.L. 104-290, 110 Stat. 3416 (1996).

## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

**An applicant for a license had adequate notice both that the public interest standard would be applied and of the contents of the standard,** because the authority to deny the

application specifically refers to the statute imposing the standard and because the applicant, administrative law judge, and commissioner all referred to the same factors applicable to the standard. *Westmark Asset Mgmt. Corp. v. Joseph*, 37 P.3d 516 (Colo. App. 2001).

**11-51-411. Abandonment of license.** If a licensed person has died or ceased to exist as a legal entity, has been adjudicated incompetent, or cannot be located by the securities commissioner after a reasonable search, the securities commissioner may by order summarily revoke the license on the grounds that the license has been abandoned.

**Source:** L. 90: Entire article R&RE, p. 728, § 1, effective July 1.

**11-51-412. Withdrawal.** (1) An application for a license may be withdrawn without prejudice by the applicant upon written notice to the securities commissioner before the license becomes effective unless a proceeding under section 11-51-410 to deny the license is pending.

(2) Withdrawal from licensing as a broker-dealer, investment adviser, sales representative, or investment adviser representative becomes effective thirty days after receipt by the



securities commissioner of an application to withdraw, or at such earlier time as the securities commissioner may allow, unless:

(a) A proceeding under section 11-51-410 against the licensed person is pending when the application is filed or is instituted within thirty days thereafter; or

(b) Additional information regarding the application is requested by the securities commissioner within thirty days after the application is filed.

(3) If a proceeding is pending or instituted under subsection (2) of this section, withdrawal becomes effective at the time and upon the conditions the securities commissioner by order determines. If additional information is requested, withdrawal is effective thirty days after the additional information is received by the securities commissioner. If no proceeding is pending or instituted under subsection (2) of this section and withdrawal becomes effective, the securities commissioner may institute a proceeding under section 11-51-410 within one year after withdrawal became effective and enter an order as of the last date on which licensing was effective.

(4) Unless another date is specified by the federal covered adviser, withdrawal of a notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of notice from such adviser of the withdrawal.

**Source: L. 90:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 98:** (2) amended and (4) added, p. 562, § 15, effective January 1, 1999.

## PART 5

### FRAUD AND OTHER PROHIBITED CONDUCT

**11-51-501. Fraud and other prohibited conduct.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for a custodian of the funds or securities of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to effect any transaction to relinquish possession of, distribute, expend, or transfer any of the assets of the trust fund without the prior written authorization of the board, except for:

(a) The purchase or sale of authorized investments or the exchange of such assets for other assets of equal or greater value if such sale, purchase, or exchange is solely in the accounts of the trust fund;

(b) Distributions to participating local governments; or

(c) The payment of routine fees and expenses that have been authorized by the board of trustees in the annual budget of the trust fund.

(3) It is unlawful for any investment adviser of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to:

(a) Take custody or possession of the funds or securities of the trust fund;

(b) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(c) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(4) It is unlawful for any broker-dealer or financial institution acting in an advisory capacity to a local government investment pool trust fund organized under the provisions

of part 7 of article 75 of title 24, C.R.S., or any person employed by or directly associated with such broker-dealer or financial institution to:

(a) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(b) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(5) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or of any purchase or sale thereof, whether through the issuance of analyses or reports or otherwise to:

(a) Employ any device, scheme, or artifice to defraud any client or prospective client;

(b) Make an untrue statement of a material fact to any client or prospective client or to omit to state to any client or prospective client any material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading, in the disclosure statement delivered to any client or prospective client pursuant to section 11-51-409.5 or a similar document under the federal "Investment Advisers Act of 1940" or during the solicitation of any such client or otherwise in connection with providing investment advisory services; or

(c) Engage in any transaction, act, practice, or course of business that operates or would operate as a fraud or deceit upon any client or prospective client or that is fraudulent, deceptive, or manipulative.

(6) It is unlawful for an investment adviser or investment adviser representative acting as principal for such person's own account or on behalf of a third party to:

(a) Sell a security to a client without disclosing in writing pursuant to section 11-51-409.5 the capacity in which the investment adviser or investment adviser representative is acting before the completion of the transaction; or

(b) Fail to obtain the written consent of the client to such transaction after disclosure has been made and before completion of the transaction.

(7) Nothing in subsection (5) or (6) of this section shall relieve an investment adviser, federal covered adviser, or investment adviser representative of liability under any other subsection of this section.

**Source:** L. 90: Entire article R&RE, p. 728, § 1, effective July 1. L. 93: (2) to (4) added, p. 326, § 2, effective July 1. L. 98: (5) to (7) added, p. 562, § 16, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-123 (1) as it existed prior to 1990.

**Cross references:** For the applicability of this section, see § 11-51-102 (1), (2), and (9); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976). For article, "Federal Practice and Procedure", see 58 Den. L.J. 371 (1981). For article, "A Comparison of Rule 10b-5 and the Colorado Securities Act of 1990", see 20 Colo. Law. 41 (1991).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**This section appears to be the analogue of § 10(b) of the federal securities and exchange act.** Kerby v. Commodity Res. Inc., 395 F. Supp. 786 (D. Colo. 1975); Ohio v. Peterson, Lowry,

Rall, Barber & Ross, 472 F. Supp. 402 (D. Colo. 1979), aff'd, 651 F.2d 687 (10th Cir.), cert. denied, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981); People v. Riley, 708 P.2d 1359 (Colo. 1985); Western-Realco Ltd. v. Harrison, 791 P.2d 1139 (Colo. App. 1989); Rosenthal v. Dean Witter Reynolds, Inc., 883 P.2d 522 (Colo. App. 1994).

Federal authorities are highly persuasive when, as here, the Colorado Securities Act parallels federal enactments. Lowery v. Ford Hill Inv. Co., 192 Colo. 125, 556 P.2d 1201 (1976); Rosenthal v. Dean Witter Reynolds, Inc., 883 P.2d 522 (Colo. App. 1994).



**This section is identical to section 101 of the uniform securities act**, which act this state has adopted. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976); *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir.), *cert. denied*, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981); *People v. Riley*, 708 P.2d 1359 (Colo. 1985).

**Subsection (1) is sufficiently explicit** in its terms to inform persons of ordinary intelligence of the conduct that is criminally proscribed and thus passes constitutional muster in the face of a void-for-vagueness challenge. *People v. Riley*, 708 P.2d 1359 (Colo. 1985).

**Section 11-51-301(1)(f) deals with matters not included within the ambit of this section**, and so there is no violation of equal protection in the differing sanctions imposed by the sections as the classification made by the legislature in enacting the sections is not arbitrary or unreasonable. *People v. Blair*, 195 Colo. 462, 579 P.2d 1133 (1978).

**Like proscriptions and no explicit private cause of action.** This section and § 10(b) of the federal securities and exchange act are alike in their proscriptions of fraudulent conduct and in the fact that neither statute explicitly creates a private cause of action. *Kerby v. Commodity Res. Inc.*, 395 F. Supp. 786 (D. Colo. 1975).

**There is no private right of action** under this section and § 11-51-125. *Philbosian v. First Fin. Sec. Corp.*, 550 F. Supp. 61 (D. Colo. 1982).

**Section 11-51-125 (2) provides for a private right of action** for violations of this section. *Noland v. Gurley*, 566 F. Supp. 210 (D. Colo. 1983).

**Jury may find that trust arrangements are "securities"**, and thus subject to sanction under this section. *People v. Blair*, 195 Colo. 462, 579 P.2d 1133 (1978).

**Nonmanagerial interest in partnership may be a security**; and, therefore, a person may be convicted of securities fraud for the sale thereof. *People v. Robb*, 215 P.3d 1253 (Colo. App. 2009).

**Court did not err in allowing jury to determine whether a joint operating agreement involved a security in a criminal securities fraud case.** There was sufficient evidence to support a determination that the form 610 agreement was an investment contract and, therefore, a security. *People v. Pahl*, 169 P.3d 169 (Colo. App. 2006).

**The required mental state for securities fraud is "willful"**. *People v. Hoover*, 165 P.3d 784 (Colo. App. 2006).

**Proof of knowledge that an investment is a security is not required to convict a defendant for "willful" securities fraud.** *People v. Rivera*, 56 P.3d 1155 (Colo. App. 2002); *People v.*

*Hoover*, 165 P.3d 784 (Colo. App. 2006); *People v. Destro*, 215 P.3d 1147 (Colo. App. 2008).

**Thus, jury instruction stating that the prosecution does not have to prove defendant was aware that he or she was dealing with a security is permissible.** *People v. Rivera*, 56 P.3d 1155 (Colo. App. 2002); *People v. Hoover*, 165 P.3d 784 (Colo. App. 2006); *People v. Destro*, 215 P.3d 1147 (Colo. App. 2008).

**A violation of subsection (1)(b) does not require scienter, that is, intent to defraud.** Proof of scienter is not required to support an administrative order proscribing violations of subsection (1)(b) where the commissioner issued only a cease and desist order under § 11-51-606 (1.5)(d)(IV) and did not seek damages, restitution, or disgorgement. Section 11-51-602 (2) contains a separate and additional requirement of proof of "scienter" if the commissioner also seeks damages, restitution, or disgorgement as part of the proceeding. *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727 (Colo. App. 2009).

**Scienter is an element** of the crime of fraudulent practices in connection with the sale of securities. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**But instruction as to "specific intent" insufficient.** With regard to securities law violations, the use of the term "specific intent" in jury instructions confuses matters and adds little or nothing productive or illuminating and thus, instructions given under this section are to be phrased only in terms of "knowingly", "willfully", and "aware". *People v. Blair*, 195 Colo. 462, 579 P.2d 1133 (1978); *People v. Riley*, 708 P.2d 1359 (Colo. 1985).

**Instruction on the definition of materiality not error.** Appellate court rejected defendant's argument that the definition was incorrect because it was a civil, objective standard and was inconsistent with subsection (1)(b). The structure of the Colorado Securities Act demonstrates the general assembly's intent to define general provisions applicable to both criminal and civil violations. Definitions derived from civil law may be applied to criminal statutes. Thus the definitions in part 2 apply generally to all parts of the Colorado Securities Act, whether those parts are at issue in a civil or criminal case. *People v. Prendergast*, 87 P.3d 175 (Colo. App. 2003).

**Evidence in the record supports commissioner's determination that information not disclosed was material.** Nondisclosure of finder's license revocation and permanent injunction constituted an omission of a material fact necessary in order to make statements in private placement memorandum not misleading. The issue is not whether the finder could continue to act as a finder for respondents after finder's license was revoked but rather whether respondents should have disclosed that information,

when it became known to them, in order to make other information not misleading. *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727 (Colo. App. 2009).

**No exception to disclosure requirements for publicly available information.** *Black Diamond Fund, LLLP v. Joseph*, 211 P.3d 727 (Colo. App. 2009).

**Because the effect of instructing the jury that good faith is not a defense to a securities fraud prosecution was to create a substantial risk that the jury would find the defendant guilty of violating this section** even if the defendant had acted in good faith, the instruction was thus irreconcilably at odds with the court's prior instruction on the culpability element of willfulness. *People v. Riley*, 708 P.2d 1359 (Colo. 1985); *Heller v. People*, 712 P.2d 1023 (Colo. 1986); *Thornton v. People*, 716 P.2d 1115 (Colo. 1986).

**Simple negligence alone cannot be the basis of liability** under a charge of fraudulent practices in connection with the sale of securities. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**Submission of jury instruction was error.** Submission of a jury instruction that made misrepresentation in connection with the sale of a security a strict liability offense was error. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**Advice of counsel is relevant** to a charge of fraudulent practices in connection with a sale of securities, and a defendant should be entitled to show, if he can, that he sold the securities based upon his good faith reliance on such advice that he could do so legally. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**But is not absolute defense.** Reliance on advice of counsel is not an absolute defense to the charge of fraudulent practices in connection with the sale of securities but rather merely a factor for the jury to consider. *People v. Terranova*, 38 Colo. App. 476, 563 P.2d 363 (1976).

**A claim for misrepresentation under the Colorado Securities Act** does not depend upon the exempt or nonexempt status of the security. The misrepresentation may occur in the context of the registration statement for a nonexempt security or in the promotion or negotiations for sale of an exempt or nonexempt security. *West-*

*ern-Realco Ltd. v. Harrison*, 791 P.2d 1139 (Colo. App. 1989).

**The plain language of this section makes no distinction between an untrue statement of a material fact and a failure to state a material fact.** Thus the supreme court will not create such a dichotomy and disapproves any reading of the Securities Act of 1981 that results in such a practice. *Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095 (Colo. 1995).

**Similar transaction evidence of whether the defendants engaged in a pattern or practice and a plan, scheme, or design** in regard to the alleged fraud and violation of the Colorado Securities Act related to a material fact and the trial court erred in not allowing the plaintiffs to present such evidence where the probative value thereof was not substantially outweighed by the danger of unfair prejudice. *Munson v. Boettcher & Co., Inc.*, 832 P.2d 967 (Colo. App. 1991).

**Arbitration of claims under this section was final such that plaintiff was collaterally estopped from reasserting same claims under federal securities laws.** The court found the Colorado and federal securities statutes to be "quite parallel". *Coffey v. Dean Witter Reynolds Inc.*, 961 F.2d 922 (10th Cir. 1992).

**A financial consulting agreement in which one party is retained to assist the other party in the identification of a suitable publicly held company with which that party could effect a reverse acquisition is not a security for purposes of this section.** *Broadview Fin., Inc. v. Entech Mgmt. Servs. Corp.*, 859 F. Supp. 444 (D. Colo. 1994).

**There is no specific limitations period** attached to this section. *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir.), *cert. denied*, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981).

**Three-year statute of limitations applicable.** It is apparent that, under one or another of three statutes (former § 13-80-108(1)(a), § 13-80-108(1)(b), or § 13-80-109) a three-year statute of limitations is provided by Colorado law for civil actions arising out of this section. *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir.), *cert. denied*, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981) (decided prior to 1986 enactment of three-year statute of limitations in § 13-80-101).

**11-51-502. Misleading filings.** It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

**Source:** L. 90: Entire article R&RE, p. 729, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-115 as it existed prior to 1990.



## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

**11-51-503. Unlawful representation concerning a license, registration, or exemption.** (1) Neither the fact that an application for a license or a registration statement has been filed nor the fact that a person is licensed or a security is registered constitutes a finding by the securities commissioner that any document filed under this article is true, complete, and not misleading. No such fact, nor the fact that an exemption or exception is available for a person, security, or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser or to any existing or prospective customer or client any representation inconsistent with subsection (1) of this section.

**Source:** L. 90: Entire article R&RE, p. 729, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-116 as it existed prior to 1990.

**Cross references:** For the applicability of this section, see § 11-51-102 (1) and (2).

## ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

## PART 6

## ENFORCEMENT AND CIVIL LIABILITY

**11-51-601. Investigations - subpoenas.** (1) The securities commissioner may make such public or private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the

securities commissioner or any officer designated by the securities commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) (a) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

(b) As it relates solely to the preservation of the confidentiality of documents and other information obtained by the securities commissioner or any officer or employee of the division of securities pursuant to this section, the division of securities shall be construed as a criminal justice agency as defined in section 24-72-302 (3), C.R.S., and such documents and other information shall be treated as criminal justice records as defined in section 24-72-302 (4), C.R.S.

(c) Except as set forth in this subsection (5), no provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

**Source:** L. 90: Entire article R&RE, p. 729, § 1, effective July 1. L. 94: (5) amended, p. 1840, § 5, effective July 1.

**Editor's note:** This section is similar to former § 11-51-119 as it existed prior to 1990.

## ANNOTATION

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Proceedings may be instituted by order.** Proceedings need not be commenced by a complaint, but may be instituted by the issuance of an order setting forth the facts and conduct warranting a "show cause" order. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**As to the extent of the order for production of documents** which requested information from appellant regarding activities, contracts, and clients, whether occurring within or outside the state, such order was admittedly broad, but the commission's power to enforce the securities act is equally broad. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Information on out-of-state activities allowed.** When only at the investigatory stage did the commission seek information about the out-of-state activities of appellant over which it could not regulate, such an investigative proce-

dures is permitted. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Individual defendant has standing to challenge failure** of the commissioner of securities to give defendant notice of the issuance of administrative subpoenas for corporate bank account records during investigation into securities law violations which was directed at both the defendant and the corporation. *People v. Lamb*, 732 P.2d 1216 (Colo. 1987).

**Failure to provide individual defendant with notice** prior to execution of administrative subpoenas for production of corporate bank records during investigation into securities law violations did not require suppression of such bank records because the defendant was not prejudiced as the subpoenas were issued in full compliance with statutory and constitutional requirements except for notice. *People v. Lamb*, 732 P.2d 1216 (Colo. 1987).

**Transactional immunity provided in this section is not self-executing upon notification to the commissioner that a witness intends to claim a privilege against self-incrimination,** but instead requires both a determination of the



likelihood of self-incrimination and a court order compelling the revelation of the subpoenaed evidence. Feigin v. Zinn, 789 P.2d 478 (Colo. App. 1990).

**To receive immunity from criminal prosecution as set forth in subsection (4), an individual subpoenaed to testify or to produce documents before the securities commissioner must first invoke the protections of the fifth amendment.** Then the securities commissioner must apply to the district court for an order compelling evidence or other information pursuant to subsections (3) and (4). Only after such an order has been issued does the immunity provided in subsection (4) apply to the testimony so compelled. People v. District Court of Arapahoe County, 894 P.2d 739 (Colo. 1995).

**Trial court's order granting commissioner's motion for leave to take expedited discovery did not compel witness to testify at his deposition.** The order entered was simply a general order regarding the time at which civil discovery could be commenced; the trial court did not direct the witness to answer particular questions, nor was it requested to do so. People v. District Court of Arapahoe County, 894 P.2d 739 (Colo. 1995).

**Colorado rules of civil procedure are not directly applicable to enforcement proceedings under the Securities Act.** However, a court may consider the policies underlying C.R.C.P. 45(b) in ruling on a motion for the advancement of costs incurred in complying with an administrative subpoena. Feigin v. Colo. Nat'l Bank, 897 P.2d 814 (Colo. 1995).

In the exercise of their equitable authority, district courts may quash an administrative subpoena found to be unreasonable or oppressive. Feigin v. Colo. Nat'l Bank, 897 P.2d 814 (Colo. 1995).

**As a general rule, recipients of subpoenas in criminal proceedings must assume the cost of compliance as a matter of civic responsibility.** However, an individualized determination is called for when it is claimed that the cost of compliance with a subpoena renders the subpoena itself unreasonable and oppressive. The person seeking to quash an administrative subpoena on such grounds has the burden of establishing the precise amount of the cost and that such amount exceeds the amount the recipient would reasonably be expected to incur as a civic responsibility. Feigin v. Colo. Nat'l Bank, 897 P.2d 814 (Colo. 1995).

**11-51-602. Enforcement by injunction.** (1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. If the action is against a broker-dealer, investment adviser, federal covered adviser, sales representative, or investment adviser representative and the court finds that such person has committed a violation of section 11-51-501, in addition to any other relief, the court may enter an order imposing such conditions on such person as the court deems appropriate. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section, relating to any violation of section 11-51-301, 11-51-401, or 11-51-501, a claim for damages under section 11-51-604 or restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action, if the applicable scienter standard of section 11-51-604 is met. No person shall be liable for damages or for restitution, disgorgement, or other equitable relief in any action authorized by subsection (1) of this section for a violation of section 11-51-301 due solely to a failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1) (p).

**Source: L. 90:** Entire article R&RE, p. 730, § 1, effective July 1. **L. 98:** (1) amended, p. 563, § 17, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-122 as it existed prior to 1990.

## ANNOTATION

**Law reviews.** For article, “The Distinction Between a Financial Planner, Investment Advisor and Broker/Dealer”, see 15 Colo. Law. 211 (1986).

**This section does not create a fiduciary relationship between the commissioner and defrauded investors.** Feigin v. Alexa Group, Ltd., 19 P.3d 23 (Colo. 2001).

**Defrauded investors are not entitled to intervention as a matter of right in an action**

**under this section.** Where investors possessed a private right of action under § 11-51-604 that was not affected by res judicata, collateral estoppel, or stare decisis, their interests would be neither impaired nor impeded for purposes of C.R.C.P. 24(a)(2). Feigin v. Alexa Group, Ltd., 19 P.3d 23 (Colo. 2001).

**11-51-603. Criminal penalties.** (1) Any person who willfully violates the provisions of section 11-51-501 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, except section 11-51-501, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor, including any violation of subsection (1) or (2) of this section, to the attorney general or the proper district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the proper United States attorney.

(4) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(5) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

**Source:** L. 90: Entire article R&RE, p. 731, § 1, effective July 1. L. 2002: (1) and (2) amended, p. 1471, § 42, effective October 1.

**Editor’s note:** This section is similar to former § 11-51-124 as it existed prior to 1990.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

## ANNOTATION

**Law reviews.** For article, “Criminal Prosecutions under the Colorado Securities Act”, see 47 U. Colo. L. Rev. 233 (1976).

**Annotator’s note.** The following annotations include cases decided under former provisions similar to this section.

**The general assembly did not intend to apply the culpable mental state of willfulness to the security element of § 11-51-501.** People v. Rivera, 56 P.3d 1155 (Colo. App. 2002); People v. Hoover, 165 P.3d 784 (Colo. App. 2006); People v. Destro, 215 P.3d 1147 (Colo. App. 2008).

**Instruction as to “specific intent” insufficient.** With regard to securities law violations, the use of the term “specific intent” in jury instructions confuses matters and adds little or

nothing productive or illuminating and thus, instructions given under this section are to be phrased only in terms of “knowingly”, “willfully”, and “aware”. People v. Blair, 195 Colo. 462, 579 P.2d 1133 (1978); People v. Riley, 708 P.2d 1359 (Colo. 1985).

**Because the effect of instructing the jury that good faith is not a defense to a securities fraud prosecution was to create a substantial risk that the jury would find the defendant guilty of violating § 11-51-123 (1)(b) and (1)(c), even if the defendant had acted in good faith, the instruction was thus irreconcilably at odds with the court’s prior instruction on the culpability element of willfulness.** People v. Riley, 708 P.2d 1359 (Colo. 1985); Thornton v. People, 716 P.2d 1115 (Colo. 1986).



**11-51-603.5. Concurrent enforcement by attorney general - legislative declaration.**

(1) To facilitate the attorney general's enforcement of criminal violations under this article as contemplated by section 11-51-603 (3), the general assembly finds that the investigation of criminal violations under this article is the primary responsibility of the attorney general, concurrently with the district attorneys of this state.

(2) For the purpose of providing adequate funding to the department of law for the investigation and prosecution of allegations of securities fraud, a portion of the fees collected under this article shall be allocated to the department of law for the investigation and prosecution of criminal violations under this article.

**Source: L. 2005:** Entire section added, p. 802, § 1, effective June 1.

**11-51-604. Civil liabilities.** (1) Any person who sells a security in violation of section 11-51-301 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition. No person is liable under this subsection (1) for a violation of section 11-51-301 due solely to a failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1) (p).

(2) (a) Except as provided in paragraph (b) of this subsection (2), any broker-dealer or sales representative who sells a security in violation of section 11-51-401 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(b) No broker-dealer or sales representative is liable under this subsection (2) for a sale of a security exempt from registration under section 11-51-307 (1) (g) to (1) (j) or for a sale of a security in a transaction exempt from registration under section 11-51-308 (1) (a), (1) (e) to (1) (l), (1) (o), or (1) (p); but this paragraph (b) does not apply if at the time of such sale:

(I) In the case of a violation of section 11-51-401 arising from the failure of a broker-dealer to be licensed under this article, such broker-dealer was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or held a limited license under this article; or

(II) In the case of a violation of section 11-51-401 arising from the failure of a sales representative to be licensed under this article, such sales representative was licensed as a sales representative or its equivalent under the laws of another state, held a limited license under this article, or in connection with such sale was acting for a broker-dealer which was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or licensed under this article.

(2.5) An investment adviser or investment adviser representative who violates section 11-51-401 is liable to each person to whom investment advisory services are provided in violation of such section in an amount equal to the greater of one thousand dollars or the value of all the benefits derived directly or indirectly from the relationship or dealings with such person prior to such time as the violation may be cured, together with interest at the statutory rate from the date of receipt of such benefits, costs, and reasonable attorney fees.

(2.6) An investment adviser or investment adviser representative who provides investment advisory services to another person but who recklessly, knowingly, or with an intent

to defraud fails to furnish to that person a written disclosure statement as required by section 11-51-409.5 is liable to such other person in an amount equal to one thousand dollars, the value of all benefits derived directly or indirectly from the relationship or dealings with such person, or for actual damages suffered by such other person, whichever is greatest, plus interest at the statutory rate, costs, reasonable attorney fees, or such other legal or equitable relief as the court may deem appropriate.

(3) Any person who recklessly, knowingly, or with an intent to defraud sells or buys a security in violation of section 11-51-501 (1) or provides investment advisory services to another person in violation of section 11-51-501 (5) or (6) is liable to the person buying or selling such security or receiving such services in connection with the violation for such legal or equitable relief that the court deems appropriate, including rescission, actual damages, interest at the statutory rate, costs, and reasonable attorney fees.

(4) Any person who sells a security in violation of section 11-51-501 (1) (b) (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission is liable to the person buying the security from such person, who may sue to recover the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(5) (a) Every person who, directly or indirectly, controls a person liable under subsection (1), (2), (2.5), (2.6), or (3) of this section is liable jointly and severally with and to the same extent as such controlled person, unless the controlling person sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) Every person who, directly or indirectly, controls a person liable under subsection (3) or (4) of this section is liable jointly and severally with and to the same extent as such controlled person, unless such controlling person sustains the burden of proof that such person acted in good faith and did not, directly or indirectly, induce the act or acts constituting the violation or cause of action.

(c) Any person who knows that another person liable under subsection (3) or (4) of this section is engaged in conduct which constitutes a violation of section 11-51-501 and who gives substantial assistance to such conduct is jointly and severally liable to the same extent as such other person.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Every cause of action under this article survives the death of any individual who might have been a plaintiff or defendant.

(8) No person may sue under subsection (1), (2), (2.5), or (2.6) or paragraph (a) of subsection (5) of this section more than two years after the contract of sale, or, as those provisions pertain to investment advisers, federal covered advisers, investment adviser representatives, and persons who provide investment advisory services, more than two years after the date of the violation. No person may sue under subsection (3) or (4) or paragraph (b) or (c) of subsection (5) of this section more than three years after the discovery of the facts giving rise to a cause of action under subsection (3) or (4) of this section or after such discovery should have been made by the exercise of reasonable diligence and in no event more than five years after the purchase or sale, or, as those provisions pertain to investment advisers, federal covered advisers, investment adviser representatives, and persons who provide investment advisory services, more than five years after the date of the violation.

(9) No buyer or seller of securities or recipient of investment advice may sue under this section if:

(a) The buyer or seller of securities or recipient of investment advice receives, before the action is commenced, documentation of:



(I) An offer stating how liability under this section may arise and fairly advising the buyer or seller of securities or recipient of investment advice of that person's rights in connection with the offer and any information necessary, including financial, to correct any material misrepresentation or omission in the information that was required by this article to be furnished to the person at the time of the purchase, sale, or rendering of investment advice;

(II) If the basis for relief under this subsection (9) is for a violation of subsection (1), (3), or (4) of this section and the person seeking rescission is a buyer of securities:

(A) An offer to repurchase the security for cash, payable on delivery of the security, in an amount equal to the consideration paid plus interest at the statutory rate from the date of the purchase less the amount of any income received on the security; or

(B) If the buyer no longer owns the security, an offer to pay the purchaser, upon acceptance of the offer, damages in the amount that would be recoverable upon tender of the security less the value of the security when the buyer disposed of the security plus interest at the statutory rate from the date of the purchase, in cash, equal to the damages computed in the manner provided in this subparagraph (II);

(III) If the basis for relief under this subsection (9) is for a violation of subsection (1), (3), or (4) of this section and the person seeking rescission is a seller of securities:

(A) An offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the buyer, and interest at the statutory rate after the date of sale of the security to the buyer; or

(B) If the buyer no longer owns the security, an offer to pay the seller of the security upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the buyer's conduct that may have caused liability and interest at the statutory rate after the date of sale of the security by the seller to the buyer;

(IV) If the basis for relief under this subsection (9) is a violation of subsection (2) of this section:

(A) If the person is a buyer, an offer to pay pursuant to subparagraph (II) of this paragraph (a); or

(B) If the person is a seller of securities, an offer to tender or to pay as specified in subparagraph (III) of this paragraph (a);

(V) If the basis for relief under this subsection (9) is a violation of subsection (2.5) of this section, an offer to reimburse, in cash, the consideration paid for the advice and interest at the statutory rate from the date of the payment;

(VI) If the basis for relief under this subsection (9) is a violation of subsection (2.6) of this section, an offer to reimburse, in cash, the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the statutory rate from the date of the violation causing the loss;

(b) The offer pursuant to paragraph (a) of this subsection (9) states that the offer must be accepted by the buyer or seller of securities or recipient of investment advice within thirty days after the offer is mailed by the buyer or seller of securities or recipient of investment advice. The party seeking rescission may request that the securities commissioner authorize a time period for acceptance that is less than thirty days but not less than three days. The securities commissioner shall have the authority to grant such change in the acceptance period.

(c) The offeror has the ability to pay the amount offered or to tender the security under paragraph (a) of this subsection (9) at the time the offer is made;

(d) The offer pursuant to paragraph (a) of this subsection (9) is delivered to the buyer or seller of securities or recipient of investment advice, or sent in a manner that ensures receipt by the buyer or seller of securities or recipient of investment advice; or

(e) The buyer or seller of securities or recipient of investment advice who accepts the offer made pursuant to paragraph (a) of this subsection (9) is paid in accordance with the terms of the offer.

(10) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order under this article or who has

acquired any purported right under any such contract with knowledge of the facts by reason of which the making or performance of any such contract was in violation may base any suit on the contract.

(11) Any condition, stipulation, or provision binding any person acquiring or disposing of any security to waive compliance with any provision of this article or any rule or order under this article is void.

(12) The rights and remedies provided by this article may be pleaded and proved in the alternative and are in addition to any other rights or remedies that may exist at law or in equity, but this article does not create any cause of action not specified in this section or section 11-51-602.

(13) Any person liable under this section may seek and obtain contribution from other persons liable under this section, directly or indirectly, for the same violation. Contribution shall be awarded by the court in accordance with the actual relative culpabilities of the various persons so liable.

(14) In the case of a willful violation of or a willful refusal to comply with or obey an order issued by the securities commissioner to any person pursuant to section 11-51-410 or 11-51-606, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the court regarding such violation or refusal. If the securities commissioner establishes by a preponderance of the evidence that the person willfully violated or willfully refused to comply with or obey the order, the court may impose legal and equitable sanctions as are available to the court in the case of contempt of court and as the court deems appropriate upon such person.

**Source:** **L. 90:** Entire article R&RE, p. 731, § 1, effective July 1. **L. 94:** (14) added, p. 1840, § 6, effective July 1. **L. 98:** (2.5) and (2.6) added and (3), (5)(a), and (8) amended, p. 564, § 18, effective January 1, 1999. **L. 2004:** (9) amended, p. 515, § 4, effective July 1.

**Editor's note:** This section is similar to former § 11-51-125 as it existed prior to 1990.

**Cross references:** For the applicability of this section, see § 11-51-102 (7); for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

## ANNOTATION

**Law reviews.** For article, "Recent Developments Affecting Securities Litigation in Colorado", see 13 Colo. Law. 1161 (1984). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Securities Litigation in the 1990s", see 19 Colo. Law. 2045 (1990). For article, "A Comparison of Rule 10b-5 and the Colorado Securities Act of 1990", see 20 Colo. Law. 41 (1991). For article, "Protecting the Professional: Contribution Bar Orders in Securities Cases", see 24 Colo. Law. 775 (1995). For article, "Contribution Rights in Colorado Securities Fraud Cases", see 29 Colo. Law. 51 (June 2000). For article, "Control Person Liability in Colorado", see 33 Colo. Law. 43 (March 2004).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**This section appears to be the analogue of § 12 of the federal securities act of 1933.** Kerby v. Commodity Res. Inc., 395 F. Supp. 786 (D. Colo. 1975).

**Section 11-51-125 (2) provides for a private right of action** for violations of this section. Noland v. Gurley, 566 F. Supp. 210 (D. Colo. 1983).

**The provisions of this section were adopted intact from the text of the uniform securities act** and are almost identical to 15 U.S.C. § 77 (2). Lowery v. Ford Hill Inv. Co., 192 Colo. 125, 556 P.2d 1201 (1976); Ohio v. Peterson, Lowry, Rall, Barber & Ross, 472 F. Supp. 402 (D. Colo. 1979), aff'd, 651 F.2d 687 (10th Cir.), cert. denied, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981).

**This section permits rescission.** Andrews v. Blue, 489 F.2d 367 (10th Cir. 1973).

**Provisions of subsection (1) concerning the allowance of attorney fees are permissive and not mandatory.** Andrews v. Blue, 489 F.2d 367 (10th Cir. 1973).

**Persons are not allowed to violate the securities acts under the guise of the contractual provisions.** A contract cannot be used as a shield for wrongdoing amounting to statutory



fraud. *Andrews v. Blue*, 489 F.2d 367 (10th Cir. 1973).

**No liability where offerees had equal access to information.** Transactions by which defendant shareholder was issued all authorized common stock of corporate defendant and subsequently without filing registration statement caused corporate defendant to offer some of that stock to several different persons who were personal friends, acquaintances, or business associates of defendant, or president of corporate defendant, under restriction of first refusal agreement in favor of defendant where each of the offerees by virtue of their relationship had access to any information which would have been revealed by a registration statement, did not give rise to liability under statutes providing for registration of securities. *Lively v. Hirschfeld*, 308 F. Supp. 612 (D. Colo. 1970).

**When plaintiff is entitled to relief as to misrepresentation.** Whenever the elements of misrepresentation under the statute are proven, and the defendant fails to establish the affirmative defense of lack of knowledge, the plaintiff is entitled to relief. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**Such claim is not dependent on exemption status of security.** The claim of misrepresentation under the Colorado securities act does not depend upon the exempt or nonexempt status of the security. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**This section does not require intentional deception for plaintiff to prevail.** *Pottern v. Bache Halsey Stuart, Inc.*, 41 Colo. App. 451, 589 P.2d 1378 (1978).

**Where misrepresentation may occur.** Misrepresentation may occur in the context of the registration statement for a nonexempt security or in the promotion or negotiations for sale of an exempt or nonexempt security. *Lowery v. Ford Hill Inv. Co.*, 192 Colo. 125, 556 P.2d 1201 (1976).

**A misrepresented or omitted fact is considered material** under subsection (1) (now subsection (3)) if there is a substantial likelihood that a reasonable investor would consider the matter important in making an investment decision. Whether or not the misrepresentation or omitted fact is important turns on whether a reasonable investor would regard it as significantly altering the "total mix" of information made available. *Goss v. Clutch Exch., Inc.*, 701 P.2d 33 (Colo. 1985).

Failure to disclose deduction amounting to one-third of ostensible profit constitutes failure to disclose a material fact. *Jenkins v. Jacobs*, 748 P.2d 1318 (Colo. App. 1987).

**This section does not require a plaintiff to plead reliance on an untrue statement or omission of material fact.** So long as plaintiff sufficiently pleads causation, plaintiff need not allege direct reliance. *Rosenthal v. Dean Witter*

*Reynolds, Inc.*, 908 P.2d 1095 (Colo. 1995) (decided under former § 11-51-125).

**At trial, when required to prove reliance or causation,** plaintiff must show that defendant's omission or misstatement was a substantial factor in plaintiff's decision to take the course of action that led to plaintiff's loss. *Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095 (Colo. 1995) (decided under former § 11-51-125).

**A corporation that issues its own stock in reliance on another's deception or manipulative practice may be deemed a "seller" with standing to sue under subsection (5)(c).** In re Stat-Tech Sec. Litig., 905 F. Supp. 1416 (D. Colo. 1995).

**A corporation that is defrauded into issuing its own stock may sue under subsection (5)(c).** In re Stat-Tech Sec. Litig., 905 F. Supp. 1416 (D. Colo. 1995).

**While the facts alleged to support a nexus between the alleged fraud and outside director's state of mind are sparse, they are sufficient to state claims under this section.** They permit an inference that the director knew corporation's financial condition and stock value were inflated, and that he used that knowledge for his own gain. In re Stat-Tech Sec. Litig., 905 F. Supp. 1416 (D. Colo. 1995).

**Plaintiffs failed to plead a claim against securities dealer for primary liability under this section where plaintiffs' only attempt to connect dealer to the alleged misrepresentations was through its employment of broker.** In re Stat-Tech Sec. Litig., 905 F. Supp. 1416 (D. Colo. 1995).

**"Control" pursuant to subsection (5) may be established by showing defendant had some indirect means of discipline or influence over the primary violator.** A showing of "actual" or "culpable" participation is not required. *First Interstate Bank of Denver, N.A. v. Pring*, 969 F.2d 891 (10th Cir. 1992), rev'd on other grounds sub nom. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S. Ct. 1439, 128 L. Ed. 2d 119 (1994); In re Stat-Tech Sec. Litig., 905 F. Supp. 1416 (D. Colo. 1995).

**Reckless or negligent conduct does not provide a legal basis for a claim of aiding and abetting under subsection (5)(c).** *Stat-Tech Liquidating Trust v. Fenster*, 981 F. Supp. 1325 (D. Colo. 1997).

**The 1990 reenactment of the aiding and abetting provision is intended to limit aiding and abetting claims to those instances where the plaintiff can demonstrate that the defendant had knowledge of the primary violation.** Recklessness is no longer a sufficient basis for imposing liability. *Stat-Tech Liquidating Trust v. Fenster*, 981 F. Supp. 1325 (D. Colo. 1997).

**Subsection (5) (now (8)) of this section applies a statute of limitations for actions arising**

**ing under this section.** *Trussell v. United States Underwriters, Ltd.*, 228 F. Supp. 757 (D. Colo. 1964); *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir.), *cert. denied*, 454 U.S. 895, 102 S. Ct. 392, 70 L. Ed. 2d 209 (1981).

**Subsection (8) is a substantive element of a securities claim that does not restrict the court's jurisdiction and may be waived by the parties.** The lack of specificity in the statute makes it comparable to other statutes that are also not jurisdictional. *Home Health Care Prof. v. Colo. Dept. of Labor*, 937 P.2d 851 (Colo. App. 1996).

**Waiving the statute of repose is not contrary to public policy when there is no contention that the agreement prompted plaintiff to delay investigation or wait for more favorable securities prices to bring suit, or that additional problems of proof developed.** The agreement was for the benefit of both parties to preclude unnecessary litigation while federal issues were on appeal. *Home Health Care Prof. v. Colo. Dept. of Labor*, 937 P.2d 851 (Colo. App. 1996).

**Summary judgment was appropriate for claim filed more than two years after stock purchase.** Where all of the plaintiffs' stock was purchased prior to 1975 and the plaintiffs' amended complaint asserting a claim under this section was not filed until 1978, more than two years later, summary judgment for defendant on plaintiffs' claim under this section was appropriate. *Norton v. Leadville Corp.*, 43 Colo. App. 527, 610 P.2d 1348 (1979).

**Subsection (7) (now subsection (10)) is virtually identical to 15 U.S.C. § 77n.** *Sandefur v. Reynolds Sec., Inc.*, 44 Colo. App. 343, 618 P.2d

690 (1980); *Sandefur v. District Court*, 635 P.2d 547 (Colo. 1981), *overruled on other grounds in Sager v. District Court*, 698 P.2d 250 (Colo. 1985).

**Subsection (7) (now subsection (10)) applies to waiver of judicial trial and review.** *Sandefur v. Reynolds Sec., Inc.*, 44 Colo. App. 343, 618 P.2d 690 (1980), *overruled on other grounds in Sager v. District Court*, 698 P.2d 250 (Colo. 1985).

**The nonwaiver provision of subsection (10) is void under the supremacy clause** because it conflicts with the federal Arbitration Act. *Sager v. District Court*, 698 P.2d 250 (Colo. 1985).

**Anti-waiver clause renders forum selection clauses in securities purchase agreement void.** *Mathers Family Trust v. Cagle*, \_\_\_ P.3d \_\_\_ (Colo. App. 2011).

**Plaintiffs are precluded from bringing an action under this section** because they received and accepted a promissory note as a refund of the consideration. *Tynan Volkswagen v. N. Donald and Co., Inc.*, 757 P.2d 153 (Colo. App. 1988).

**Applicability of time limits to class actions.** As long as the party seeking to act as a class representative does not commence a new, separate suit as class representative, but merely seeks to maintain the currently pending and timely filed action as a class action and act as class representative, the statute of repose does not apply. *Rosenthal v. Dean Witter Reynolds, Inc.*, 883 P.2d 522 (Colo. App. 1994).

**The language of this provision does not limit its applicability to initial offerings rather than the sale of U.S. treasury notes in the secondary market.** *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461 (D. Colo. 1996).

**11-51-605. Burden of proof.** In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

**Source:** L. 90: Entire article R&RE, p. 733, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 (5) as it existed prior to 1990.

**11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner - rules.** (1) Any administrative proceeding under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to any proceeding conducted pursuant to this article. Except as specified in paragraph (d) of subsection (1.5) or paragraph (e) of subsection (3) of this section, the securities commissioner shall refer the conduct of all hearings to an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., or a panel of the securities board in the discretion of the securities commissioner, based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the securities commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

(1.5) (a) Whenever it appears to the securities commissioner, based upon sufficient



evidence as presented in a petition by an officer or employee of the division of securities, that a person has committed or may commit any of the acts or practices listed in paragraph (b) of this subsection (1.5), then, in addition to any specific powers granted under this article, the securities commissioner, in his or her discretion, may issue to such person an order to show cause why the securities commissioner should not enter a final order directing such person to cease and desist from the unlawful act or practice, or impose such other sanctions as provided in subparagraph (IV) of paragraph (d) of this subsection (1.5). The securities commissioner shall, within two calendar days, notify the chairperson of the securities board or an administrative law judge that an order to show cause has been issued, and the chairperson or administrative law judge shall set a date for hearing on such order before the securities board or administrative law judge as provided in paragraph (d) of this subsection (1.5).

(b) The securities commissioner may take action pursuant to paragraph (a) of this subsection (1.5) with regard to any of the following acts or practices:

(I) The sale of a security is subject to registration under this article and the security is being offered or has been offered or sold in violation of section 11-51-301, or any rule or order under said section;

(II) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-401 or any rule or order under said section;

(III) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-501 or any rule or order under said section;

(IV) Any person has engaged or is about to engage in any act or practice in violation of any provision of article 53 of this title; or

(V) Any person has violated or is about to violate any order previously entered by the securities commissioner.

(c) Any person against whom an order to show cause has been entered pursuant to paragraph (a) of this subsection (1.5) shall be promptly notified by the securities division of the entry of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the chairperson of the securities board or an administrative law judge for hearing on such order. Such notice may be served by United States mail, postage prepaid, to the last-known address of such person, by personal service, by facsimile transmission, or as may be practicable upon any person against whom such order is entered. Mailing or facsimile transmission of an order or other documents under this subsection (1.5), or personal service of such orders or documents, shall constitute notice thereof to the person.

(d) (I) The hearing on an order to show cause shall be commenced no sooner than ten nor later than twenty-one calendar days following the date of transmission or service of the notification by the securities division as provided in paragraph (c) of this subsection (1.5). The hearing may be continued by agreement of all of the parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than thirty-five calendar days following the date of transmission or service of the notification.

(II) If a person against whom an order to show cause entered pursuant to paragraph (a) of this subsection (1.5) does not appear at the hearing, the securities division may present evidence that notification was properly sent or served upon such person pursuant to paragraph (c) of this subsection (1.5) and such other evidence related to the matter as the securities board or administrative law judge deems appropriate. In the case where such person does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board or administrative law judge that there is a reasonable basis to believe such notification was actually received or served, or, after reasonable search by the securities division, the person against whom the order was entered cannot be located. The securities commissioner shall enter such order within ten days after his or her determination related to reasonable attempts of notification of the respondent, and the order shall become final as to that person by operation of law.

(III) At any hearing pursuant to this paragraph (d), the securities board or administrative law judge shall take evidence and hear arguments from the securities division and the person against whom the order to show cause has been entered, pursuant to such rules and procedures as may be adopted by the securities commissioner. Based on the evidence entered and arguments heard at the hearing, the securities board or administrative law judge shall enter findings of fact, conclusions of law, and an initial decision recommending to the securities commissioner that a final order be entered affirming, denying, vacating, or otherwise modifying the order to show cause. The initial decision shall be issued within ten days after the conclusion of the hearing provided pursuant to this paragraph (d) and shall be promptly delivered to the securities commissioner.

(IV) If the securities commissioner reasonably finds that the person against whom the order to show cause was entered has engaged, or is about to engage, in acts or practices constituting violations as set forth in paragraph (b) of this subsection (1.5) and makes the findings required by section 11-51-704 (2), he or she may issue a final cease-and-desist order imposing one or more of the following sanctions:

(A) Directing such person to cease and desist from further unlawful acts or practices;

(B) Censuring the person, if the person is a licensed broker-dealer, sales representative, investment adviser, or investment adviser representative; or

(C) Requiring such person to undertake or comply with conditions or limitations placed upon the activities, functions, or operations of such person, within such reasonable time period as may be imposed by the securities commissioner.

(V) The securities commissioner shall provide notice of the final order within ten calendar days after receiving the initial decision, in the manner set forth in paragraph (c) of this subsection (1.5), to each person against whom such order has been entered. The final order entered pursuant to subparagraph (IV) of this paragraph (d) shall be effective when issued, and shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(2) (a) Whenever it appears to the securities commissioner, based upon sufficient evidence presented to the securities commissioner in a stipulation between an officer or employee of the division of securities and any person, that such person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article, any rule promulgated pursuant to this article, or any order issued under this article, or any act or practice constituting grounds for administrative sanction under this article, the securities commissioner may issue a consent order against such person.

(b) In any consent order issued pursuant to this subsection (2), the securities commissioner may:

(I) Prohibit the respondent from any further violation of any provision, rule, or order under this article that is alleged in the stipulation to have been violated or from engaging in the conduct alleged in the stipulation as grounds for sanction under this article; and

(II) Impose conditions, limitations, or sanctions as stipulated.

(3) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that, in the case of a registration statement subject to the escrow provisions in section 11-51-302 (5) or (6), there has been a violation of such escrow provisions, or, in the case of any registration statement under section 11-51-304, any of the grounds specified in section 11-51-306 (1) exist, the securities commissioner may enter a summary stop order postponing or suspending the effectiveness of the registration statement.

(b) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that sufficient grounds exist under section 11-51-310 (1), the securities commissioner may enter a summary order under section 11-51-310 (1) (b) suspending the exemption from securities registration under section 11-51-307 (1) (g) as to a specified security or issuer pending final determination of a proceeding under that section.

(c) No summary order may be entered pursuant to this subsection (3) unless the securities commissioner determines, in addition to the findings required under section 11-51-704 (2), that immediate issuance of such summary order is imperatively necessary for the protection of investors. An order issued pursuant to this subsection (3) is effective when



entered and shall be accompanied by a brief statement of findings of fact and conclusions of law.

(d) Upon entering a summary order, the securities commissioner shall promptly notify each person against whom it has been entered of its entry and the basis therefor by providing to each such person at such person's last known mailing address a copy of the order and the accompanying findings of fact and conclusions of law.

(e) (I) Any person against whom a summary stop order or summary order suspending exemption has been entered may make a written request to the securities commissioner that the matter be set for a hearing if such request is made within twenty-one calendar days after the date of entry of the order. Upon receipt of such request, the securities commissioner shall notify the chairperson of the securities board, and the chairperson shall set a date for a hearing within twenty-one days to determine whether to continue the summary order.

(II) Any such hearing before the securities board shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. Following the hearing, the securities board shall issue its initial decision, accompanied by findings of fact and conclusions of law. The securities commissioner shall then enter a decision that shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(III) If the securities commissioner does not receive a request for a hearing pursuant to subparagraph (I) of this paragraph (e), the order shall become final twenty-one calendar days after the entry of such order.

(4) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that any of the grounds specified in section 11-51-410 (1) exist as to any licensed person or, in the case of a licensed broker-dealer, a partner, officer, director, person occupying a similar status or performing similar functions, or a person directly or indirectly controlling a broker-dealer, the securities commissioner may issue to such person an order to show cause why the securities commissioner should not summarily suspend the license of that person or limit or impose conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. The securities commissioner shall promptly notify the chairperson of the securities board that an order to show cause has been issued, and the chairperson shall set a date for hearing on such order before the securities board.

(b) Any person against whom an order to show cause has been entered shall be promptly notified by the securities division of the entry of such order and the basis therefor. Such notice shall include a copy of the order, and shall include the date set by the chairperson of the securities board for hearing on such order. In the case of a broker-dealer, the notification shall be sent both to the broker-dealer's last known mailing address and, if different, the most current mailing address the broker-dealer has on file with the securities commissioner as required in section 11-51-407 (3). In the case of a sales representative, notification shall be sent to the sales representative's last known mailing address, the most current mailing address the sales representative has on file with the securities commissioner as required in section 11-51-407 (3), and the last known mailing address of the broker-dealer or issuer for which the sales representative is licensed to act.

(c) (I) The hearing on the order to show cause shall be commenced no sooner than seven, nor later than twenty, calendar days following the date of transmission of notification of the respondent by the division of securities as provided in paragraph (b) of this subsection (4).

(II) The securities board shall take evidence and hear arguments from the securities division and the respondent. If the respondent does not appear, the securities division may provide evidence that notification was promptly sent by the securities division to the respondent pursuant to paragraph (b) of this subsection (4). In the case where the respondent does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board that there is reasonable basis to believe the respondent either received actual notice, or, after reasonable search by the securities division, cannot be located.

(III) Based on the evidence entered and arguments heard at the hearing, the securities board shall enter findings of fact, conclusions of law, and its initial decision recommending

to the securities commissioner that an order be entered either denying the petition of the securities division for summary order or suspending the license of that person or otherwise limiting or imposing conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. Exceptions to the initial decision of the securities board must be filed with the securities commissioner within ten calendar days of the date of entry of such order. The securities commissioner shall then issue an order, which shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(d) Any order entered under paragraph (c) (III) of this subsection (4) suspending a license or otherwise limiting or imposing conditions on the securities activities of the licensed person shall remain in effect during the pendency of a proceeding under sections 24-4-104 and 24-4-105, C.R.S., unless vacated or modified on judicial review pursuant to section 11-51-607 or by subsequent order of the securities commissioner after notice and opportunity for hearing.

(5) No order under subsection (3) (b), (3) (c), or (4) (a) of this section may be entered by the securities commissioner unless a proceeding under sections 24-4-104 and 24-4-105, C.R.S., either has been commenced, or is commenced promptly following or contemporaneously with the entry of such an order.

(6) The securities commissioner may promulgate a rule that defines what constitutes prompt filing and notification pursuant to this section.

**Source:** **L. 90:** Entire article R&RE, p. 734, § 1, effective July 1. **L. 94:** Entire section amended, p. 1841, § 7, effective July 1. **L. 2001:** (1) amended and (1.5) added, p. 800, § 1, effective July 1. **L. 2004:** (1), (1.5)(a), (1.5)(c), and (1.5)(d) amended and (6) added, pp. 517, 519, §§ 5, 6, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Putting the Brakes on Securities Fraud: Cease and Desist Authority", see 30 Colo. Law. 73 (September 2001).

**11-51-607. Judicial review of orders.** (1) Any person aggrieved by a final order of the securities commissioner may obtain a review of the order in the court of appeals pursuant to the provisions of section 24-4-106 (11), C.R.S.

(2) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

**Source:** **L. 90:** Entire article R&RE, p. 734, § 1, effective July 1. **L. 94:** (1) amended, p. 1844, § 8, effective July 1.

**Editor's note:** This section is similar to former § 11-51-120 as it existed prior to 1990.

#### ANNOTATION

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Scope of review.** On review, if the findings of fact are supported by competent material and substantial evidence, they are conclusive; if not, they are arbitrary and capricious and amount to

an abuse of discretion. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**Applied** in *Raymond Lee Org., Inc. v. Div. of Sec.*, 192 Colo. 112, 556 P.2d 1209 (1976).



## PART 7

## ADMINISTRATION AND FEES

**11-51-701. Division of securities - creation - powers and duties.** There is hereby created the division of securities within the department of regulatory agencies, the head of which shall be the commissioner of securities, who shall be appointed by the executive director of the department of regulatory agencies, pursuant to the provisions of section 13 of article XII of the state constitution, and the securities board. The division shall be responsible for the administration of the provisions of articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., and shall perform such other duties as are imposed upon it by law.

**Source:** **L. 90:** Entire article R&RE, p. 734, § 1, effective July 1. **L. 91:** Entire section amended, p. 2425, § 3, effective June 8. **L. 93:** Entire section amended, p. 327, § 3, effective July 1. **L. 94:** Entire section amended, p. 1845, § 9, effective July 1.

**Editor's note:** This section is similar to former § 11-51-103 as it existed prior to 1990.

## ANNOTATION

**Law reviews.** For article, "Recent Developments Affecting Securities Litigation in Colorado", see 13 Colo. Law. 1161 (1984).

**Applied** in *Barreras v. People*, 636 P.2d 686

(Colo. 1981) (decided under § 11-51-103 as it existed prior to the 1990 repeal and reenactment of this article).

**11-51-702. Division subject to termination. (Repealed)**

**Source:** **L. 90:** Entire article R&RE, p. 734, § 1, effective July 1. **L. 91:** Entire section repealed, p. 678, § 7, effective April 20.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-51-104 as it existed prior to 1990.

**11-51-702.5. Securities board - creation - duties - repeal.** (1) There is hereby created the securities board within the department of regulatory agencies which shall consist of five persons appointed by the governor, subject to the consent and approval of the senate, as follows:

(a) Two persons who are licensed by the state supreme court to practice law in the state of Colorado and who are conversant in securities law;

(b) One person certified as a certified public accountant pursuant to article 2 of title 12, C.R.S.; and

(c) Two persons who are members of the public at large.

(2) (a) One of the members of the securities board shall reside west of the continental divide.

(b) The members shall serve terms of three years with each term ending on July 1 of the year in which such term expires; except that initial appointments shall begin January 1, 1995, and one of the members initially appointed pursuant to paragraph (a) and one of the members initially appointed pursuant to paragraph (c) of subsection (1) of this section shall serve until July 1, 2000, the member initially appointed pursuant to paragraph (b) of subsection (1) of this section shall serve until July 1, 2001, and the other members initially appointed shall serve until July 1, 1999.

(c) Any vacancy on the securities board occurring before the expiration of the term shall be filled by the governor for the remainder of the term.

(d) Securities board members may be removed for cause.

(e) Securities board members shall be reimbursed for actual and necessary expenses, not to include out-of-state travel expenses.

(f) On and after July 1, 2004, members of the board shall serve no more than two consecutive terms on the board.

(3) Securities board members shall be subject to the conflict of interest limitations placed on other employees of the division of securities pursuant to section 11-51-703 (2).

(4) The securities board shall provide oversight to the securities commissioner and shall be available to advise the securities commissioner at the request of the securities commissioner on issues affecting the division of securities and securities regulations in the state.

(5) The securities board shall meet as often as is necessary, but no less than quarterly. Meetings may be called by the chairperson of the securities board at the request of the securities commissioner or any member of the securities board.

(6) (a) The securities board shall aid and advise the securities commissioner at the request of the securities commissioner in connection with the duties of the securities commissioner under articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., including but not limited to the promulgation of rules, issuance of orders, formulation of policies, and the setting of fees under such articles and other issues affecting the division of securities and securities regulation in the state.

(b) (Deleted by amendment, L. 2004, p. 15, § 1, effective July 1, 2004.)

(c) The securities board shall hear the matters described in section 11-51-606 (1.5) (d), (3) (e), and (4) (d) and issue the initial decisions as provided therein. The chairperson of the securities board shall determine the date and place for such hearings and may appoint a panel of the securities board consisting of no less than three board members to conduct such hearings. Any hearing held regarding an order issued by the securities commissioner under section 11-51-606 (3) or (4) shall be heard by the securities board.

(7) (a) This section is repealed, effective July 1, 2015.

(b) Prior to such repeal, the functions of the securities board shall be reviewed as provided for in section 24-34-104, C.R.S.

**Source:** L. 94: Entire section added, p. 1845, § 10, effective July 1. L. 96: (6)(c) amended, p. 1467, § 6, effective June 1. L. 2001: (6)(c) amended, p. 802, § 2, effective July 1. L. 2004: (2)(f) added and (6)(b) and (7)(a) amended, p. 15, §§ 2, 1, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Putting the Brakes on Securities Fraud: Cease and Desist Authority", see 30 Colo. Law. 73 (September 2001).

**11-51-703. Administration of article.** (1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division of securities with such books, records, files, and printing and other supplies and employ such officers and clerical and other assistance as may be necessary in the securities commissioner's discretion to perform the duties required of the securities commissioner under this article.

(2) It is unlawful for the securities commissioner or any of the officers or employees of the division of securities to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public. No provision of this article authorizes the securities commissioner or any of such officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this article. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

(3) The securities commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby public documents may be initially filed and maintained in the central registration depository, the investment adviser registration depository, or with other agencies or authorities. It is the



intent of this subsection (3) that the securities commissioner be provided with the power to reduce the duplication of filings, reduce administrative costs, and, in conjunction with other states and with federal authorities, establish uniform procedures, forms, and administration to be used by this state and by such other states and by such federal authorities.

(4) The securities commissioner may delegate to any officer of the division of securities any power, duty, authority, or function created by this article and vested in the securities commissioner, but nothing in this subsection (4) shall authorize the securities commissioner to delegate to any officer the securities commissioner's authority to make rules, institute proceedings or actions under section 11-51-306, 11-51-410, or 11-51-602, refer evidence under section 11-51-603 (3), or exercise the authority created by this section, section 11-51-704 (1) or (2), or section 11-51-707 (3) (a) or (3) (b).

**Source:** L. 90: Entire article R&RE, p. 734, § 1, effective July 1. L. 2001: (3) amended, p. 16, § 3, effective March 9.

**Editor's note:** This section is similar to former § 11-51-117 as it existed prior to 1990.

### ANNOTATION

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Proceedings may be instituted by order.** Proceedings need not be commenced by a complaint, but may be instituted by the issuance of an order setting forth the facts and conduct warranting a "show cause" order. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**The confidentiality provisions of subsection (2) of this statute** do not prohibit the commissioner of securities from disclosing information about possible law violations by any person during an examination of the books and records of such person to any other state or federal regulatory or law enforcement agency. *Griffin v. S. W. Devanney & Co., Inc.*, 775 P.2d 555 (Colo. 1989).

**11-51-704. Rules, forms, and orders.** (1) The securities commissioner may, from time to time, make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules and forms, the securities commissioner may classify securities, persons, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(2) No rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(3) The securities commissioner may, by rule or order, prescribe the form and content of financial statements required under this article, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. Unless the securities commissioner by rule or order provides otherwise, a financial statement required under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles as are prescribed for the issuer of the financial statement by the securities and exchange commission.

(4) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted in good faith and in conformity with any rule, form, or order of the securities commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by any judicial or other authority to be invalid for any reason.

**Source: L. 90:** Entire article R&RE, p. 735, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-118 as it existed prior to 1990.

#### ANNOTATION

**Law reviews.** For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**Proceedings may be instituted by order.**

Proceedings need not be commenced by a complaint, but may be instituted by the issuance of an order setting forth the facts and conduct warranting a "show cause" order. *Raymond Lee Org., Inc. v. Sec. Comm'n*, 36 Colo. App. 417, 543 P.2d 75 (1975), rev'd on other grounds, 192 Colo. 112, 556 P.2d 1209 (1976).

**The commissioner properly relied on factors stated in federal case law to construe the public interest standard in denying an application for licensure**, as § 11-51-101 explicitly requires that state orders be coordinated with federal securities law and the federal standards are reasonable. *Westmark Asset Mgmt. Corp. v. Joseph*, 37 P.3d 516 (Colo. App. 2001) (applying factors stated in *Steadman v. Sec. and Exch. Comm'n*, 603 F.2d 1126 (5th Cir. 1979)).

**Applied** in *Lowery v. Ford Hill Inv. Co.*, 37 Colo. App. 260, 548 P.2d 127 (1976).

**11-51-705. Interpretive opinions.** The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exemptions from securities registration under sections 11-51-307 to 11-51-309 or for other interpretive opinions regarding any provision of this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-51-707 and which shall not be refundable. In response to any request for a confirmation or other interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

**Source: L. 90:** Entire article R&RE, p. 736, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-126 as it existed prior to 1990.

**11-51-706. Consent to service of process.** (1) An applicant for licensing under this article, a person filing a registration statement under this article, and an issuer who proposes to offer in this state through an agent a security registered under this article shall file with the securities commissioner, in such form as the securities commissioner by rule prescribes, an irrevocable consent appointing the securities commissioner or the successor in office of the securities commissioner to be the attorney for said person to receive service of any lawful process in any noncriminal suit, action, or proceeding against such person, or the successor, executor, or administrator of such person, arising under this article or any rule or order under this article after the consent has been filed with the same force and validity as if served personally on the person filing the consent.

(2) A person who has filed a consent in compliance with subsection (1) of this section in connection with a previous application for licensing or registration need not file an additional consent, but the securities commissioner may request, and in response to such request such person shall provide, verification of such previous consent.

(3) Service upon any person who has filed a consent pursuant to subsection (1) of this section may be made by leaving a copy of the process in the office of the securities commissioner, but it is not effective unless the plaintiff, who may be the securities commissioner in a suit, action, or proceeding instituted by the securities commissioner, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the securities commissioner and unless the plaintiff's affidavit of compliance with this subsection (3) is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.



(4) The methods of service of process provided for in this section are in addition to other methods of service of process provided for by law, including section 13-1-124, C.R.S. Any violation of this article shall be deemed to constitute the transaction of business within this state for the purpose of section 13-1-124, C.R.S.

**Source: L. 90:** Entire article R&RE, p. 736, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-127 as it existed prior to 1990.

**11-51-707. Collection of fees - division of securities cash fund created.** (1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.

(2) The securities commissioner shall transmit all fees collected under this article, not including fees retained by contractors pursuant to contracts entered into in accordance with section 11-51-405 or 24-34-101, C.R.S., to the state treasurer, who shall credit the same to the division of securities cash fund, which fund is hereby created. Pursuant to subsection (3) of this section, the general assembly shall make annual appropriations from said fund for expenditures of the division of securities. The expenditures incurred by the division shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law. All moneys credited to the division of securities cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) (a) The division shall set the amount of each fee which it is authorized by law to collect under this article. The budget request and the fees for the division shall reflect direct and indirect costs. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-302 according to a scale of rates applied to the dollar amount of securities to be registered, with a maximum fee specified. The division, in the discretion of the securities commissioner, may set an investment company registration renewal fee payable under section 11-51-302 (7) and an exemption fee payable under section 11-51-307 (1) (k) for each series, portfolio, separate account, or fund of an open-end management company or unit investment trust. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-905 (4), according to a scale of rates applied to the asset size of the trust fund as of the date of registration. The division, in the discretion of the securities commissioner, may set annual fees payable under section 11-51-906 (4) (e), according to a scale of rates applied to the asset size of the trust fund as of the date of the filing of the annual audit.

(b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division shall set its fees for a fiscal year so that the revenue generated from said fees approximates its direct and indirect costs, including statewide indirect costs. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

(c) On July 1 each year, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

**Source: L. 90:** Entire article R&RE, p. 737, § 1, effective July 1. **L. 93:** (3)(a) amended, p. 331, § 5, effective July 1. **L. 94:** (3)(a) amended, p. 1847, § 11, effective July 1. **L. 2004:** (2) amended, p. 1253, § 3, effective May 27.

**Editor's note:** This section is similar to former § 11-51-129 as it existed prior to 1990.

**11-51-708. Administrative files.** (1) A document is filed when it is received by the securities commissioner.

(2) The securities commissioner shall keep a register of all applications for licenses and registration statements which are or have ever been effective under this article and all orders which have been entered under this article. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, application, or report may be made available to the public under article 72 of title 24, C.R.S.

(4) Upon request and at such reasonable charges as the securities commissioner prescribes, the securities commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record and may certify their authenticity; and the securities commissioner may also provide certification of the absence of any entry in the register or the absence of any document or other record from division files which are of public record. In any action, proceeding, or prosecution under this article, any copy so certified, and any certification by the securities commissioner as to the absence of any such entry, document, or record from division files, are prima facie evidence of the contents of the entry, document, or record so certified or of the absence of the entry, document, or record which is the subject of such certification.

**Source: L. 90:** Entire article R&RE, p. 738, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-126 as it existed prior to 1990.

## PART 8

### EFFECTIVE DATE - REPEAL OF ARTICLE

**11-51-801. Effective date of article.** This article shall be effective on and after July 1, 1990, subject to the provisions of section 11-51-802.

**Source: L. 90:** Entire article R&RE, p. 738, § 1, effective July 1.

**11-51-802. Savings provisions.** (1) Except as otherwise provided in this section, articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, exclusively govern all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring prior to July 1, 1990; except that no civil suit or action may be maintained to enforce any liability under such prior law unless brought within any period of limitation which applied when the cause of action accrued.

(2) All registrations of securities under such prior law in effect immediately prior to July 1, 1990, shall remain in effect after said date subject to revocation, termination, or withdrawal as provided under such prior law and subject to all administrative orders and all conditions relating to such registrations as were in effect under such prior law.

(3) Such prior law applies to any offer to sell or sale made no later than January 1, 1991, pursuant to an offering begun in good faith before July 1, 1990, on the basis of an exemption available under said prior law.

(4) (a) Every person registered or exempt from registration as a broker, dealer, principal, or representative under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, shall be automatically licensed as a broker-dealer or sales representative, as the case may be, under this article on July 1, 1990, subject to all fines, censures, suspensions, revocations, conditions, or limitations imposed upon or in connection with such registration or exemption or upon such person, as if imposed upon or in connection with a license under this article, so long as such sanctions would have remained in effect under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990. Such sanctions shall continue to be governed by such prior law.

(b) There are no grounds for the denial of automatic licensing under paragraph (a) of this subsection (4). After July 1, 1990, every person automatically licensed under paragraph (a) of this subsection (4) shall comply with the provisions of this article as if such person's license had been originally obtained by application under the provisions of this article.



(c) No proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed pursuant to paragraph (a) of this subsection (4) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to July 1, 1990; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (i), or (1) (j) initiated and concluded prior to July 1, 1990.

(d) Nothing in this subsection (4) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance which has occurred or existed prior to July 1, 1990:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 which is based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c), (1) (d), (1) (e), or (1) (f) entered or imposed on or after July 1, 1990; or

(B) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after July 1, 1990.

(e) Nothing in this subsection (4) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after July 1, 1990, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after July 1, 1990, without regard for when such act or conduct was initiated.

(f) Any administrative action by the securities commissioner under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, initiated or pending prior to July 1, 1990, against an applicant for registration, or a person registered or exempt from registration, as a broker, dealer, principal, financial principal, representative, or financial representative shall be governed by such prior law; except that as of July 1, 1990, such action shall be construed as an action under section 11-51-410 either to deny an application for a license or to impose sanctions against a licensed person, as the case may be, and the sanctions provided under section 11-51-410 shall apply.

(5) (a) Any person with a place of business in this state who is registered with the securities and exchange commission as an "investment adviser" under the federal "Investment Advisers Act of 1940", who is exempt from registration as an investment adviser pursuant to section 203 (b) of said act, or who is registered as an investment adviser in any other state, and who, prior to January 1, 1999, has filed an application and paid the appropriate fee in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser under this article effective January 1, 1999.

(b) Any individual with a place of business in this state who is associated either with a federal covered adviser, or an investment adviser licensed automatically pursuant to paragraph (a) of this subsection (5), and regarding whom, prior to or on January 1, 1999, an application has been filed and the appropriate fee paid in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser representative for such federal covered adviser or investment adviser under this article, effective January 1, 1999. Automatic licensing under this paragraph (b) is unavailable to any individual who is the subject of any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to January 1, 1999, or is currently the subject of a proceeding in which any of the sanctions set forth in such paragraphs could be imposed.

(c) After January 1, 1999, no proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed automatically pursuant to paragraph (a) or (b) of this subsection (5) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed prior to January 1, 1999; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) initiated and concluded prior to January 1, 1999.

(d) Nothing in this subsection (5) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance that has occurred or existed prior to January 1, 1999:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after January 1, 1999; or

(B) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after January 1, 1999.

(e) Nothing in this subsection (5) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1) (c) to (1) (f) entered or imposed on or after January 1, 1999, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1) (a), (1) (b), (1) (g), (1) (h), (1) (i), or (1) (j) concluded on or after January 1, 1999, without regard for when such act or conduct was initiated.

**Source:** L. 90: Entire article R&RE, p. 738, § 1, effective July 1. L. 98: (5) added, p. 565, § 19, effective January 1, 1999.

**Editor's note:** This section is similar to former § 11-51-128 as it existed prior to 1990.

**Cross references:** For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

**11-51-803. Repeal of article.** (1) This article is repealed, effective July 1, 2015.

(2) Prior to such repeal, the division of securities shall be reviewed as provided for in section 24-34-104, C.R.S.

**Source:** L. 90: Entire article R&RE, p. 740, § 1, effective July 1. L. 91: Entire section amended, p. 678, § 8, effective April 20. L. 94: (1) amended, p. 1847, § 12, effective July 1. L. 2004: (1) amended, p. 520, § 7, effective July 1.

## PART 9

### LOCAL GOVERNMENT INVESTMENT POOL TRUST FUND ADMINISTRATION AND ENFORCEMENT ACT

**11-51-901. Short title.** This part 9 shall be known and may be cited as the "Local Government Investment Pool Trust Fund Administration and Enforcement Act".

**Source:** L. 93: Entire part added, p. 327, § 4, effective July 1.

**11-51-902. General powers of securities commissioner.** The securities commissioner is hereby empowered to administer and enforce the provisions of part 7 of article 75 of title 24, C.R.S., and all the provisions of this part 9.

**Source:** L. 93: Entire part added, p. 327, § 4, effective July 1.



**11-51-903. Interests in local government investment pool trust fund.** (1) For the purposes of this part 9, unless the context otherwise requires:

(a) The interest of a participating local government in a local government investment pool trust fund is a "security", as defined by section 11-51-201 (17); and

(b) The solicitation of a local government to participate in a local government investment pool trust fund constitutes an "offer" to sell a security, as defined by section 11-51-201 (13) (c), by the trust fund to the local government, and the consummation of an agreement to participate in a local government investment pool trust fund constitutes a "sale" of a security, as defined by section 11-51-201 (13) (a), by the trust fund to the local government.

**Source: L. 93:** Entire part added, p. 327, § 4, effective July 1.

**11-51-904. Requirement for registration of local government investment pools.**

(1) It is unlawful for the board of trustees of any local government investment pool trust fund to permit the investment of trust fund assets unless the trust fund is registered with the securities commissioner under this part 9.

(2) It is unlawful for a local government to participate in a local government investment pool trust fund unless the trust fund is registered with the securities commissioner under this part 9.

**Source: L. 93:** Entire part added, p. 328, § 4, effective July 1.

**11-51-905. General registration requirements.** (1) A local government investment pool trust fund shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and a copy of the resolution adopted pursuant to section 24-75-703, C.R.S.

(2) Any local government investment pool trust fund organized pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and the resolution adopted pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, no later than thirty days after July 1, 1993.

(3) The information to be provided to the securities commissioner by a local government investment pool trust fund in the notice for registration shall include, but need not be limited to:

- (a) The name and address of the trust fund;
- (b) The name and address of the administrator of the trust fund;
- (c) The name and address of each of the custodians of the assets of the trust fund;
- (d) The name and address of each of the investment advisers of the trust fund and each of the financial institutions acting in an advisory capacity for the trust fund;
- (e) Identification of each participating local government in the trust fund; and
- (f) The total assets of the trust fund as of the date of filing.

(4) Every filing of the notice and resolution required under this section shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such registration fee shall be more than five thousand dollars.

**Source: L. 93:** Entire part added, p. 328, § 4, effective July 1.

**11-51-906. Reports to securities commissioner.** (1) A local government investment pool trust fund shall inform the securities commissioner of any material change regarding the administrator, investment adviser, broker-dealer, or financial institution acting in an advisory capacity, or custodian of the trust fund within ten days of such change.

(2) (a) The board of trustees of a local government investment pool trust fund shall file quarterly reports with the securities commissioner in the form prescribed by the securities commissioner.

(b) Such reports shall demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(c) The information to be provided in such quarterly reports may include, but need not be limited to:

- (I) The identity of the participating local governments;
- (II) The amount of participation of each such participating local government; and
- (III) The total assets of the trust fund.

(d) In addition to the quarterly reports required in paragraph (a) of this subsection (2), the securities commissioner may, by rule or order, require the board of trustees of a local government investment pool trust fund to file such other periodic reports with the securities commissioner as are necessary to demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(3) The financial statements of a local government investment pool trust fund shall be prepared in accordance with generally accepted accounting principles except as the securities commissioner may otherwise provide by rule or order.

(4) (a) A local government investment pool trust fund shall file with the securities commissioner an annual audit of the trust fund to be completed at least annually, but at intervals of not more than fifteen months, performed by an independent certified public accountant.

(b) The securities commissioner may, by rule or order, provide that such audits include safeguards to ensure that they adequately describe the financial condition of the trust fund.

(c) Such audit shall be completed and submitted to the securities commissioner within the time lines the securities commissioner by rule or order prescribes.

(d) Such audit shall include, but need not be limited to, the following information:

- (I) The name and address of each custodian holding or which at any time since the last annual audit held any assets of the trust fund;
- (II) The amount and description of the assets of the trust fund on deposit with or otherwise in the custody of each such custodian; and

(III) Any other information the securities commissioner prescribes by rule or order.

(e) Every filing of the annual audit required under this subsection (4) shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such annual fee shall be more than two thousand dollars.

**Source: L. 93:** Entire part added, p. 329, § 4, effective July 1.

**11-51-907. Access to records.** (1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, any accounts held by a custodian on behalf of a local government investment pool trust fund and all books, records, and papers pertaining thereto, and all accounts, books, records, and papers pertaining thereto, within or without this state, in the possession of any administrator, the board of trustees, any investment adviser of or broker-dealer or financial institution acting in an advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment adviser representative.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy, or cause to be copied, or request from and shall receive copies of such documents as are made and maintained by the custodians, administrator, board of trustees, investment adviser of or broker-dealer or financial institution acting in advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment adviser representative in connection with a local government investment pool trust fund in the normal course of business, at the expense of such person, in order to determine compliance with this part 9 and part 7 of article 75 of title 24, C.R.S., as amended.

**Source: L. 93:** Entire part added, p. 330, § 4, effective July 1.



**11-51-908. Confidentiality of information.** Financial information and the identities of participating local governments in the possession of, filed with, or obtained by the securities commissioner under this part 9 shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities except in connection with any investigation or proceeding or with the consent of the board of trustees of the local government investment pool trust fund to which such information pertains. Such information shall be construed as information within the meaning of section 24-72-204 (3) (a) (IV), C.R.S.

**Source: L. 93:** Entire part added, p. 331, § 4, effective July 1.

**ARTICLE 51.5**

**Investor Protection**

**11-51.5-101 to 11-51.5-108. (Repealed)**

**Source: L. 84:** Entire article repealed, p. 398, § 8, effective July 1.

**Editor’s note:** This article was added in 1975. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**ARTICLE 52**

**False Statements Concerning Securities**

**11-52-101 and 11-52-102. (Repealed)**

**Source: L. 90:** Entire article repealed, p. 741, § 8, effective July 1.

**Editor’s note:** This article was numbered as article 4 of chapter 125, C.R.S. 1963. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**ARTICLE 53**

**Colorado Commodity Code**

**Editor’s note:** (1) This article was numbered as article 5 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Prior to 1989, this article was referred to as the Antibucketing Law. When this article was repealed and reenacted in 1989, the Colorado Commodity Code replaced the Antibucketing Law. The Commodity Code is based on the Model State Commodity Code drafted in 1984 by a national committee of state, federal, and industry regulators and experts. It is designed to fill a jurisdictional void between securities and commodities laws.

PART 1		11-53-102.	Definitions.
REGULATION OF COMMODITY SALES - UNLAWFUL ACTIVITIES		11-53-103.	Unlawful commodity transactions.
		11-53-104.	Exempt person transactions.
		11-53-105.	Exempt transactions.
11-53-101.	Short title.	11-53-106.	Unlawful commodity activities.

11-53-107.	Fraudulent conduct.	11-53-202.	Enforcement - cease-and-desist orders.
11-53-108.	Misleading filings.	11-53-203.	Power of court to grant relief.
11-53-109.	Liability of principals, controlling persons, and others.	11-53-204.	Criminal penalties - statute of limitations.
11-53-110.	Securities law unaffected.	11-53-205.	Administration of article.
11-53-111.	Purpose.	11-53-206.	Cooperation with other agencies.
PART 2		11-53-207.	General authority to adopt rules, forms, and orders.
ENFORCEMENT OF COMMODITY CODE - PENALTIES		11-53-208.	Scope of article.
		11-53-209.	Pleading exemptions.
		11-53-210.	Affirmative defenses.
11-53-201.	Investigations - subpoenas.	11-53-211.	Interpretive opinions.

## PART 1

REGULATION OF COMMODITY SALES -  
UNLAWFUL ACTIVITIES

**11-53-101. Short title.** This article shall be known and may be cited as the "Colorado Commodity Code".

**Source: L. 89:** Entire article R&RE, p. 629, § 1, effective July 1.

**11-53-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(2) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on July 1, 1989, and all subsequent amendments, additions, or other revisions thereto, unless the commissioner, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof to this article or to any provisions thereof by rule.

(3) "Commissioner" means the commissioner of securities created by section 11-51-701.

(4) "Commodity" means, except as otherwise specified by the commissioner by rule, regulation, or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal as defined in subsection (13) of this section), any gem or gemstone (whether characterized as precious, semi-precious, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. The term "commodity" shall not include:

(a) A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains;

(b) Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such property; or

(c) Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.

(5) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion



of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(6) "Commodity exchange act" means the federal "Commodity Exchange Act", as amended, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provisions thereof by rule.

(7) "Commodity futures trading commission" means the federal commission established by the commodity exchange act.

(8) "Commodity merchant" means any of the following as defined or described in the commodity exchange act or by CFTC rule:

- (a) Futures commission merchant;
- (b) Commodity pool operator;
- (c) Commodity trading advisor;
- (d) Introducing broker;
- (e) Leverage transaction merchant;
- (f) An associated person of any of the foregoing;
- (g) Floor broker; and
- (h) Any other person (other than a futures association) required to register with the commodity futures trading commission.

(9) "Commodity option" means any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise, but shall not include an option traded on a national securities exchange registered with the securities and exchange commission.

(10) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(11) "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

(12) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government but does not include the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission (or any employee, officer or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(13) "Precious metal" means the following in either coin, bullion, or other form:

- (a) Silver;
  - (b) Gold;
  - (c) Platinum;
  - (d) Palladium;
  - (e) Copper; and
  - (f) Such other items as the commissioner may specify by rule, regulation, or order.
- (14) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(15) "Securities and exchange commission" means the commission established by the "Securities Exchange Act of 1934".

(16) "Securities Exchange Act of 1934" and "Investment Company Act of 1940" mean the federal statutes of those names as amended, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provision thereof by rule.

**Cross references:** For the “Commodity Exchange Act”, see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the “Securities Exchange Act of 1934”, see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the “Investment Company Act of 1940”, see Pub.L. 76-768, 54 Stat. 789 (1940).

**11-53-103. Unlawful commodity transactions.** Except as otherwise provided in section 11-53-104 or 11-53-105, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

**Source: L. 89:** Entire article R&RE, p. 631, § 1, effective July 1.

**11-53-104. Exempt person transactions.** (1) The prohibitions in section 11-53-103 shall not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(a) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(b) A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph (a) or (b) of this subsection (1);

(d) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(e) A financial institution; or

(f) A person registered under the laws of this state as a securities broker or dealer whose activities require such registration.

(2) The exemption provided by subsection (1) of this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule.

**Source: L. 89:** Entire article R&RE, p. 632, § 1, effective July 1.

**11-53-105. Exempt transactions.** (1) The prohibitions in section 11-53-103 shall not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;

(b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment; except that, for purposes of this paragraph (b), physical delivery shall be deemed to have occurred if, within such twenty-eight-day period:

(I) Such quantity of precious metals purchased by such payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either:

(A) A financial institution;

(B) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;

(C) A storage facility licensed or regulated by the United States or any agency thereof; or

(D) A depository designated by the commission; and

(II) Such depository (or other person which itself qualifies as a depository as provided in said subparagraph (I)) or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be



held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants, each commodity subject thereto, or any by-product thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 11-53-104, an insurance company, an investment company as defined in the "Investment Company Act of 1940", or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan or individual retirement account).

(2) For the purposes of paragraph (b) of subsection (1) of this section, a "qualified seller" is a person who:

(a) Is a seller of precious metals and has a tangible net worth of at least five million dollars (or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller, and the affiliate has a tangible net worth of at least five million dollars);

(b) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years;

(c) Prior to any offer, and annually thereafter, files with the commissioner a sworn notice of intent to act as a qualified seller under paragraph (b) of subsection (1) of this section, containing:

(I) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons;

(II) The address of its principal place of business, state and date of incorporation or organization, and the name and address of the seller's registered agent in this state;

(III) A statement that the seller (or a person affiliated with the seller who has unconditionally guaranteed the obligations and liabilities of the seller) has a tangible net worth of at least five million dollars;

(IV) The name and address of the depository or depositories that the seller intends to use, and the name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years;

(V) Financial statements for the seller (or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller) for the past three years, including balance sheet and income statements which have been audited by an independent certified public accountant, together with the accountant's report;

(VI) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including:

(A) Civil litigation and administrative proceedings involving securities or commodities law violations, or fraud;

(B) Criminal proceedings;

(C) Denials, suspensions, or revocations of securities or commodities licenses or registrations;

(D) Suspensions or expulsions from membership in, or association with, self-regulatory organizations registered under the "Securities Exchange Act of 1934" or the commodity exchange act; or

(E) A statement that there were no such proceedings;

(d) Notifies the commissioner within fifteen days of any material changes in the information provided in the notice of intent; and

(e) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the commissioner, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

(3) The commissioner may, upon request by the seller, waive any of the exemption requirements in paragraph (b) of subsection (1) and subsection (2) of this section, conditionally or unconditionally.

(4) The commissioner may, by order, deny, suspend, revoke, or place limitations on the qualified seller exemption under paragraph (b) of subsection (1) and subsection (2) of this section if the commissioner finds that the order is in the public interest and that the seller, the seller's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, or the seller's affiliates or subsidiaries:

(a) Has filed a notice of intention under subsection (2) of this section with the commissioner or the designee of the commissioner which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has violated or failed to comply with a provision of this article or is the subject of an adjudication or determination within the last five years by an agency, administrator, or court of competent jurisdiction of any other jurisdiction that the person has willfully violated the anti-fraud provisions of any state or federal securities or commodities law;

(c) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime involving fraud or unlawful taking;

(d) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice in violation of the anti-fraud provisions of any state or federal securities or commodities law;

(e) Is the subject of any of the following orders which are in effect and issued within the last five years:

(I) An order by the administrator of any jurisdiction administering a state commodity law or the commodity futures trading commission entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, leverage transaction merchant, associated person, floor broker, or the substantial equivalent of those terms;

(II) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the commodity exchange act;

(III) A United States postal service fraud order; or

(IV) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(f) Has failed reasonably to supervise its sales representatives or sales employees engaged in the investment commodities business.

(5) The commissioner may designate an administrative law judge, appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings pursuant to section 24-4-105, C.R.S.

(6) Any person aggrieved by a final order of the commissioner may obtain review of the order in the district court of the city and county of Denver pursuant to the provisions of section 24-4-106, C.R.S.

(7) If the commissioner finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may, by order, revoke qualified seller status.

(8) By order or rule and subject to such terms and conditions prescribed therein, the commissioner may, from time to time, add any persons or transactions not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, to the persons and transactions exempted from the prohibitions set forth in section 11-53-103, if the commissioner finds that such prohibitions are not necessary in the public interest and for the protection of investors.

**Source:** L. 89: Entire article R&RE, p. 632, § 1, effective July 1. L. 90: (1)(b)(II) amended, p. 1839, § 13, effective May 31.

**Cross references:** For the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.



**11-53-106. Unlawful commodity activities.** (1) No person shall engage in a trade or business of or otherwise act as a commodity merchant unless such person is either:

(a) Registered or temporarily licensed with the commodity futures trading commission for each activity constituting such person as a commodity merchant, and such registration or temporary license has not expired or been suspended or revoked; or

(b) Exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation has not been vacated, suspended, or revoked.

**Source: L. 89:** Entire article R&RE, p. 635, § 1, effective July 1.

**11-53-107. Fraudulent conduct.** (1) No person shall, directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of any commodity contract or commodity option prohibited by section 11-53-103 or made pursuant to section 11-53-104 or 11-53-105 (1) (b) or (1) (d):

(a) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

(b) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) Engage in any transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

(d) Misappropriate or convert the funds, security, or property of any other person.

**Source: L. 89:** Entire article R&RE, p. 636, § 1, effective July 1.

**11-53-108. Misleading filings.** It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this article, any statement which is, at the time and in the light of the circumstances under which it was made, false or misleading in any material respect.

**Source: L. 89:** Entire article R&RE, p. 636, § 1, effective July 1.

**11-53-109. Liability of principals, controlling persons, and others.** (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this article, every partner, officer, or director of such liable person, every person occupying a similar status or performing similar functions to such liable person, and every employee of such liable person who materially aids in the violation is also liable jointly and severally with and to the same extent as the person liable under the provisions of this article unless the person who is also liable by virtue of this subsection (2) sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

**Source: L. 89:** Entire article R&RE, p. 636, § 1, effective July 1.

**11-53-110. Securities law unaffected.** Nothing in this article shall impair, derogate, or otherwise affect the authority or powers of the commissioner under article 51 of this title or the application of any provision thereof to any person or transaction subject thereto.

**Source: L. 89:** Entire article R&RE, p. 636, § 1, effective July 1.

**11-53-111. Purpose.** This article shall be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and commodity options, and to maximize coordination with federal law and other states' laws and the administration and enforcement thereof. This article is not intended to create, abolish, or modify any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this article.

**Source: L. 89:** Entire article R&RE, p. 637, § 1, effective July 1.

## PART 2

### ENFORCEMENT OF COMMODITY CODE - PENALTIES

**11-53-201. Investigations - subpoenas.** (1) The commissioner in his discretion may make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated any provision of this article or any rule or order under this article or to aid in the enforcement of this article, or, in the prescribing of rules and forms under this article, the commissioner may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any proceeding brought under this article or any rule or order issued under this article.

(2) For purpose of any investigation or proceeding under this article, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner finds to be relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the commissioner, may issue to such person an order requiring the person to appear before the commissioner, or the officer designated by him, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of the person subpoenaed may tend to incriminate said person or subject the person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

**Source: L. 89:** Entire article R&RE, p. 637, § 1, effective July 1.

**11-53-202. Enforcement - cease-and-desist orders.** (1) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, the commissioner may apply to the district court for the city and county of Denver, or to the appropriate courts of another state, for the appropriate legal or equitable relief, including but not limited to:

(a) A declaratory judgment;



(b) A temporary restraining order or preliminary or permanent prohibitory or mandatory injunction enjoining the act or practice in question and to enforce compliance with this article or any rule or order under this article;

(c) An order for restitution and disgorgement, or either of them; and

(d) An order for appointment of a receiver or conservator for the defendant or the defendant's assets.

(2) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, then, in addition to the powers granted in subsection (1) of this section, the commissioner may enter an order to show cause directed to such person and shall follow substantially the procedure set forth in section 11-51-606 (1.5).

**Source:** L. 89: Entire article R&RE, p. 638, § 1, effective July 1. L. 2001: (2) added, p. 803, § 3, effective July 1.

**11-53-203. Power of court to grant relief.** (1) Upon a proper showing by the commissioner that a person has violated any provision of this article or any rule or order under this article, the court may grant appropriate legal or equitable remedies including a temporary restraining order, a preliminary and permanent prohibitory or mandatory injunction, and writ or prohibition or mandamus. In addition, the court may grant the following special remedies:

(a) Imposition of a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(b) Disgorgement;

(c) Declaratory judgment;

(d) Restitution to investors wishing restitution; and

(e) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(2) In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

**Source:** L. 89: Entire article R&RE, p. 638, § 1, effective July 1.

**11-53-204. Criminal penalties - statute of limitations.** (1) Any person who willfully violates any provision of this article, except section 11-53-108, or who willfully violates section 11-53-108 when the person knows or should know that the statement the person makes in violation of section 11-53-108 is false or misleading in any material respect commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) The commissioner may refer such evidence as is available concerning violations of this article to the attorney general, the proper district attorney or other criminal prosecutor, who may, with or without such a reference from the commissioner, prosecute the appropriate criminal proceedings.

(3) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(4) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

**Source:** L. 89: Entire article R&RE, p. 638, § 1, effective July 1. L. 2002: (1) amended, p. 1472, § 43, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

**11-53-205. Administration of article.** (1) This article shall be administered by the commissioner as the head of the division of securities within the department of regulatory agencies.

(2) Neither the commissioner nor any employees of the commissioner shall use any information which is filed with or obtained by the commissioner or the designee of the commissioner which is not public information for personal gain or benefit, nor shall the commissioner or employees of the commissioner conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

(3) Any information obtained by the commissioner or any designee of the commissioner under this article shall be nonpublic and confidential unless made public by the commissioner or the designee of the commissioner in connection with an investigation or proceeding under this article or under section 11-53-206. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any designee of the commissioner.

**Source: L. 89:** Entire article R&RE, p. 639, § 1, effective July 1.

**11-53-206. Cooperation with other agencies.** (1) To encourage uniform application and interpretation of this article and commodities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, including bearing the expense of such cooperation, with law enforcement and other regulatory agencies of this state or other jurisdictions.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, the following:

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging personnel;
- (e) Sharing and exchanging information and documents; except that any information or documents shared by the commissioner with other agencies shall remain nonpublic and confidential as provided in section 11-53-205 (3) unless made public in connection with an investigation or proceeding brought by agencies with whom said information or documents was shared; and
- (f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

**Source: L. 89:** Entire article R&RE, p. 639, § 1, effective July 1.

**11-53-207. General authority to adopt rules, forms, and orders.** (1) In addition to specific authority granted elsewhere in this article, the commissioner may make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article. Such rules or forms shall include, but need not be limited to, rules defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules or forms, the commissioner may classify commodities, commodity contracts, commodity options, persons, and matters within the commissioner's jurisdiction.

(2) Unless specifically provided in this article, no rule, form, or order may be adopted, amended, or rescinded unless the commissioner finds that the action is:

- (a) Necessary or appropriate in the public interest or for the protection of investors; and
  - (b) Consistent with the purposes fairly intended by the policy and provisions of this article.
- (3) All rules and forms of the commissioner shall be published.



(4) No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the commissioner, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

**Source: L. 89:** Entire article R&RE, p. 639, § 1, effective July 1.

**11-53-208. Scope of article.** (1) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to buy is made and accepted in this state.

(2) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who buy or offer to buy when an offer to buy is made in this state or when an offer to sell is made and accepted in this state.

**Source: L. 89:** Entire article R&RE, p. 640, § 1, effective July 1.

**11-53-209. Pleading exemptions.** It shall not be necessary to plead in the negative any of the exemptions of this article in any complaint, information, or indictment or any writ or proceeding brought under this article; and the burden of proof of any such exemption shall be upon the party claiming the same.

**Source: L. 89:** Entire article R&RE, p. 640, § 1, effective July 1.

**11-53-210. Affirmative defenses.** (1) It shall be an affirmative defense in any complaint, information, or indictment, or to any writ or proceeding brought under this article alleging a violation of section 11-53-103 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 11-53-102 (5) or 11-53-105 (1) (b) if:

(a) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, the seller's affiliates, subsidiaries, or successors; and

(b) Physical delivery was completed within a reasonable time under the applicable circumstances.

**Source: L. 89:** Entire article R&RE, p. 640, § 1, effective July 1.

**11-53-211. Interpretive opinions.** The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exclusions from the definitions set forth in section 11-53-102, for the applicability of exemptions set forth in sections 11-53-104 and 11-53-105, and for the applicability of any other provision of this article. Any person making such a request shall pay a nonrefundable fee which shall be set and collected pursuant to section 11-51-707. In response to any request for a confirmation or other interpretive opinion received pursuant to this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making the request.

**Source: L. 94:** Entire section added, p. 1847, § 13, effective July 1.

## ARTICLE 54

### Refunding Revenue Securities Law

**Cross references:** For refunding of economic development revenue bonds, see § 29-3-116.

11-54-101.	Short title.	11-54-111.	Public security provisions.
11-54-102.	Definitions.	11-54-112.	Signatures on public securities.
11-54-103.	Refunding public securities.	11-54-113.	Covenants in authorizing ordinance.
11-54-104.	Method of issuance.	11-54-114.	Incontestable recital in public securities.
11-54-105.	Limitations upon issuance.	11-54-115.	Cumulative and continuing rights of holders of public securities.
11-54-106.	Use of proceeds of refunding public securities.	11-54-116.	Construction of article.
11-54-107.	Payment of refunding public securities.	11-54-117.	Validation.
11-54-108.	Combination of refunding and other public securities.	11-54-118.	Effect - limitations.
11-54-109.	Supplemental provisions.	11-54-119.	Liberal construction.
11-54-110.	Governing body's determination final.		

**11-54-101. Short title.** This article shall be known and may be cited as the "Refunding Revenue Securities Law".

**Source:** L. 63: p. 886, § 7. C.R.S. 1963: § 125-8-1.

**11-54-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Facility" means any of the facilities or properties, revenues derived from the operation of which are pledged to the payment of public securities.

(2) Repealed.

(3) "Governing body" means the city council, commission, board of county commissioners, board of trustees, board of directors, or other legislative body of the public body designated in this article in which body the legislative powers of the public body are vested.

(4) "Issuer" means the state or public body issuing any public security.

(5) "May" is permissive.

(6) "Net effective interest rate" means the net interest cost of public securities divided by the sum of the products derived by multiplying the principal amounts of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the public securities.

(7) "Net interest cost" means the total amount of interest to accrue on public securities from their dates to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said public securities are being or have been sold. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the public securities.

(8) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which a governing body of the state or public body exercising any power under this article takes formal action and adopts legislative provisions and matters of some permanency.

(9) "Public body of the state" means the transportation commission; any state educational institution, or other state institution, its board of regents, or other governing body thereof constituting a body corporate; any county; any incorporated city or incorporated town, whether incorporated or governed under a general act, special legislative act, or special charter enacted, granted, or adopted pursuant to article XX of the state constitution, or otherwise; any school district; and any metropolitan district, metropolitan sewage disposal district, metropolitan water district, water district, sanitation district, water and sanitation district, water conservancy district, metropolitan recreation district, health service district, city housing authority, county housing authority, urban renewal agency, community redevelopment agency, any other corporate district, any other corporate authority, any corporate commission, or any other political subdivision of the state constituting a body corporate.

(10) "Public security" means a bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money, issued by the state, any public body thereof, or any predecessor of any public body of the state, and payable from designated revenues or



special fund, but excluding any obligation payable from ad valorem taxes, any obligation constituting a debt or an indebtedness within the meaning of any constitutional, charter, or statutory limitation, any obligation payable within one year from the date of its issuance, and any obligation payable from special assessments.

(11) "Shall" is mandatory.

(12) "State" means the state of Colorado, and any board, commission, department, corporation, instrumentality, or agency thereof.

(13) Words used in this article importing singular or plural number may be construed so that one number includes both; and words importing masculine gender shall be construed to apply to the feminine gender and to the neuter gender as well; but these rules of construction shall not apply to any part of this article containing express provisions excluding such construction, or where the subject matter or context is repugnant thereto.

**Source:** L. 63: p. 886, § 2. C.R.S. 1963: § 125-8-2. L. 70: p. 109, § 3. L. 89: (2) repealed, p. 1135, § 85, effective July 1. L. 91: (9) amended, p. 1056, § 9, effective July 1. L. 96: (9) amended, p. 471, § 4, effective July 1.

**11-54-103. Refunding public securities.** Any public securities issued by the state, or any public body thereof, may be refunded, without an election, by the state or public body issuing them, or any successor thereof, in the name of the state or public body issuing the public securities being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to an ordinance to be adopted by the governing body of the issuer in the manner provided by law for the issuance of the public securities being refunded, to refund, pay, and discharge all or any part of such outstanding public securities, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional public securities, or to any project appertaining thereto or any combination thereof.

**Source:** L. 63: p. 888, § 3. C.R.S. 1963: § 125-8-3.

**11-54-104. Method of issuance.** Any public securities issued for refunding purposes either may be delivered in exchange for the outstanding public securities being refunded or may be publicly or privately sold.

**Source:** L. 63: p. 888, § 4. C.R.S. 1963: § 125-8-4.

**11-54-105. Limitations upon issuance.** No public securities may be refunded under this article unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding public securities. Provision shall be made for paying the public securities within said period of time. No maturity of any public security refunded may be extended over fifteen years, nor may the net effective interest rate of the issue of refunding securities be increased to any rate exceeding the maximum net effective interest rate authorized by the governing body. The principal amount of the refunding public securities may exceed the principal amount of the refunded public securities if the aggregate principal and interest costs of the refunding public securities do not exceed such unaccrued costs of the public securities refunded, except to the extent any interest on the public securities refunded in arrears or about to become due is capitalized with the proceeds of refunding public securities. The principal amount of the refunding public securities may also be less than or the same as the principal amount of the public securities being refunded so long as provision is duly and sufficiently made for their payment. The limitations of this section shall not apply to the refunding of public securities in order to avoid default.

**Source:** L. 63: p. 888, § 5. C.R.S. 1963: § 125-8-5. L. 70: p. 109, § 4.

**11-54-106. Use of proceeds of refunding public securities.** (1) The proceeds of refunding public securities shall either be immediately applied to the retirement of the public securities to be refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the public securities upon their presentation therefor; but, to the extent any incidental expenses have been capitalized, such security proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding public securities may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the governing body may determine.

(2) No such escrow shall necessarily be limited to proceeds of refunding public securities but may include other moneys available for its purpose. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, any charges of the escrow agent payable therefrom to pay the public securities being refunded as they become due at their respective maturities or due at designated prior redemption dates in connection with which the governing body of the issuer shall exercise a prior redemption option. No purchaser of any public security issued under this article shall in any manner be responsible for the application of the proceeds thereof by the issuer or any of its officers, agents, or employees.

**Source:** L. 63: p. 888, § 6. C.R.S. 1963: § 125-8-6. L. 89: (2) amended, p. 1106, § 6, effective July 1.

**11-54-107. Payment of refunding public securities.** Refunding public securities may be made payable from any revenues derived from any utility, system, project, or other source which might be legally pledged for the payment of the public securities being refunded at the time of the refunding or at the time of the issuance of the public securities being refunded, as the governing body of the issuer may determine, notwithstanding the pledge of such revenues for the payment of the outstanding public securities being refunded is thereby modified; but there shall not be pledged for the payment of the refunding public securities any revenues which might not have been lawfully pledged for the payment of the public securities being refunded because of limitations in any question authorizing their issuance, unless the refunding public securities are similarly authorized at an election by the majority required by law for the issuance of the public securities being refunded.

**Source:** L. 63: p. 889, § 7. C.R.S. 1963: § 125-8-7.

**11-54-108. Combination of refunding and other public securities.** Public securities for refunding and public securities for any other authorized purpose may be issued separately or issued in combination in one series or more by the same issuer.

**Source:** L. 63: p. 889, § 8. C.R.S. 1963: § 125-8-8.

**11-54-109. Supplemental provisions.** Except as specifically provided or necessarily implied in this article, the relevant provisions in this article appertaining generally to the public securities being refunded shall be equally applicable in the authorization and issuance of refunding public securities, including their terms and security, the public security ordinance, trust indenture, use and service charges, and other aspects of the public securities.

**Source:** L. 63: p. 891, § 9. C.R.S. 1963: § 125-8-9.



**11-54-110. Governing body's determination final.** The determination of the governing body of the issuer that the limitations under this article imposed upon the issuance of refunding public securities have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

**Source:** L. 63: p. 891, § 10. C.R.S. 1963: § 125-8-10.

**11-54-111. Public security provisions.** (1) Public securities, including refunding public securities issued under this article and junior college revenue securities issued under the provisions of article 71 of title 23, C.R.S., shall bear interest at a rate such that the net effective interest rate of the issue of refunding public securities or junior college revenue securities does not exceed the maximum net effective interest rate authorized. Such interest shall be payable semiannually or annually and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the issuer; except that the first coupon appertaining to any public security may evidence interest not in excess of one year, and such securities may be in one or more series, may bear such date, may mature at such times not exceeding forty years from their respective dates, may be designated or redesignated, may be in such denomination, may be payable in such medium of payment and at such place within or without the state, including but not limited to the office of any county treasurer in which the issuer is located wholly or in part, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denominations, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by ordinance of the governing body of the issuer. The governing body may provide for the subordination of the security of any public securities issued under this article and the payment of principal and interest thereon, to the extent deemed feasible and desirable by the governing body, to other public securities issued to finance facilities appertaining thereto or that may be outstanding when the public securities thus subordinated are issued and delivered.

(2) The public securities shall never be sold at less than ninety-five percent of the principal amount thereof and accrued interest thereon to the date of delivery, nor at a price which will result in a net effective interest rate to the issuer of more than the maximum net effective interest rate authorized by the governing body.

(3) Public securities may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the public securities is not represented by interest coupons, the public securities may provide for the endorsing of payments of interest thereon; and the public securities generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the governing body, except as otherwise provided in this article.

(4) Subject to the payment provisions specifically provided in this article, the said public securities, any interest coupons thereto attached, and any temporary public securities shall be fully negotiable within the meaning and for all the purposes of investment securities (uniform commercial code), article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such public security, by accepting such security, shall be conclusively deemed to have agreed that such public security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all the purposes of investment securities (uniform commercial code), article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing public securities under this article:

(a) May provide for the initial issuance of one or more public securities, called "public security" in this subsection (5), aggregating the amount of the entire issue, or any designated portion thereof;

(b) May make such provision for installment payments of the principal amount of any such public security as it may consider desirable;

(c) May provide for the making of any such public security, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such public securities; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such public security may in the future, at the request of the holder thereof, be converted into public securities of smaller denominations, which public securities of smaller denominations may in turn be either coupon public securities or public securities registrable as to principal or as to both principal and interest.

(6) If lost or completely destroyed, any public security authorized in this article may be reissued in the form and tenor of the lost or destroyed public security upon the owner furnishing, to the satisfaction of the governing body: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the public security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new public security.

(7) Any officer authorized to execute any public security, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any public security authorized in this article; except that such a filing is not a condition of execution with a facsimile signature of any interest coupon, and except that at least one signature required or permitted to be placed on each such public security, excluding any interest coupon, shall be manually subscribed. The facsimile signature of an officer shall have the same legal effect as his manual signature.

(8) The clerk or secretary of the issuer may cause the seal of the issuer to be printed, engraved, stamped, or otherwise placed in facsimile on any public security. The facsimile seal shall have the same legal effect as the impression of the seal.

(9) The ordinance authorizing any public securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds or like public securities, including without limiting the generality of the foregoing, covenants designated in section 11-54-113.

**Source:** L. 63: p. 891, § 11. C.R.S. 1963: § 125-8-11. L. 70: p. 110, § 5. L. 72: p. 619, § 159. L. 75: (1) amended, p. 785, § 2, effective July 1; (4) amended, p. 207, § 12, effective July 16.

**11-54-112. Signatures on public securities.** (1) The public securities and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the issuer, notwithstanding that before the delivery thereof and payment therefor any of the persons whose signatures appear thereon shall have ceased to be officers of the issuer.

(2) Any officer authorized or permitted to sign any public security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the public security or coupons appertaining thereto, or upon both the public security and such coupons.

**Source:** L. 63: p. 892, § 12. C.R.S. 1963: § 125-8-12.

**11-54-113. Covenants in authorizing ordinance.** (1) Any ordinance authorizing the issuance of public securities under this article, or any trust indenture or other instrument appertaining thereto, may contain covenants as to:

(a) The rates, fees, tolls, and charges to be charged for the services and commodities of the facilities, revenues derived from the operation of which are pledged for the payment of the public securities, and the use and disposition thereof, including but not limited to the foreclosure of liens for and collection of delinquencies, the discontinuance of services or facilities, prohibition against free service, the collection of penalties and collection costs,



including disconnection and reconnection fees, and the use and disposition of any revenues of the issuer, derived or to be derived from any facilities;

(b) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof, to secure the payment of the principal of and the interest on any public securities or of operation and maintenance expenses of any facilities, or part thereof; the determination or definition of revenues from any facilities, and of the expenses of operation and maintenance thereof; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the issuer to the account of such facilities for the services, commodities, or facilities furnished to the issuer or any of its departments by any facilities;

(d) The issuance of other or additional public securities or other instruments payable from or constituting a charge against the revenue of any facilities; the payment of the principal of and the interest on any public securities, and the sources and methods thereof, the rank or priority of any public securities as to any lien or security for payment, or the acceleration of any maturity of any public securities, or the issuance of other or additional public securities payable from or constituting a charge against or lien upon any revenues pledged for the payment of public securities and the creation of future liens and encumbrances against these revenues, and limitations thereon; and the purpose to which the proceeds of the sale of public securities may be applied, and the custody, security, use, expenditure, application, and disposition thereof;

(e) Books of account, the inspection and audit thereof, and other records appertaining to facilities; the insurance to be carried by the issuer and use and disposition of insurance moneys, the acquisition of completion or surety bonds appertaining to any project, funds, or personnel, and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of any facilities, or any public securities having or which may have a lien on any part of any revenues of the facilities; and limitations on the powers of the issuer to acquire or operate, or permit the acquisition or operation of, any plants, structures, or properties which may compete or tend to compete with the facilities;

(f) The rights, liabilities, powers, and duties arising upon the breach by the issuer of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the public securities or of the provisions of the ordinance authorizing the public securities or any trust indenture or other instrument appertaining thereto, or of any covenant or contract with the holders of the public securities; the procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of public securities, the public security ordinance, any trust indenture or other instrument, may be amended or abrogated, the amount of public securities the holders of which, or any trustee therefor, must consent thereto, and the manner in which such consent may be given or evidenced; the terms and conditions upon which the holders of the public securities or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of the facilities, or any part thereof, operate and maintain the same, prescribe rates, fees, tolls, and charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the issuer itself might do; and the terms and conditions upon which any or all of the public securities shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(g) The vesting in a corporate or other trustee of such property, rights, powers, and duties in trust as the issuer may determine, which may include any of the rights, powers, and duties of any trustee appointed by any holders of public securities, and the limitation of liabilities of any such trustee, or the limitation or the abrogation of the right of such holders of public securities to appoint any trustee, or the limitation of the rights, powers, and duties of such trustee; and the terms and conditions upon which the holders of the public securities or any portion or percentage of them may enforce any covenants or provisions made under this article or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its public securities or, in the discretion of the governing body of the issuer, tend to make the public securities more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give an issuer power to do all things in the issuance of public securities and for their security.

**Source:** L. 63: p. 893, § 13. C.R.S. 1963: § 125-8-13.

**11-54-114. Incontestable recital in public securities.** Any ordinance authorizing, or any trust indenture or other instrument appertaining to, any public securities under this article may provide that each authorized public security shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all public securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

**Source:** L. 63: p. 895, § 14. C.R.S. 1963: § 125-8-14.

**11-54-115. Cumulative and continuing rights of holders of public securities.**  
(1) No right or remedy conferred upon any holder of any public security or of any coupon appertaining thereto or any trustee for such holder by this article or by any other law or proceedings appertaining thereto is exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law.

(2) The failure of any holder of any public securities or coupon issued under this article to proceed as provided in any proceedings appertaining to the issuance of such public security or coupon shall not relieve the issuer, its governing body, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

**Source:** L. 63: p. 895, § 15. C.R.S. 1963: § 125-8-15.

**11-54-116. Construction of article.** The powers conferred by this article shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law. Public securities may be issued under this article without regard to the provisions of any other law, except as otherwise provided in this article expressly or by necessary implication. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

**Source:** L. 63: p. 895, § 16. C.R.S. 1963: § 125-8-16.

**11-54-117. Validation.** All outstanding refunding public securities of the state and of all public bodies thereof, and all acts and proceedings had or taken, or purportedly had or taken prior to April 27, 1963, by or on behalf of the state or any public body thereof under law or under color of law preliminary to and in the authorization, execution, sale, issuance, and payment, or any combination thereof, of all such public securities are hereby validated, ratified, approved, and confirmed, including but not necessarily limited to the terms, provisions, conditions, and covenants of any ordinance appertaining thereto, the redemption of public securities before maturity and provisions therefor, the levy and collection of rates, tolls, and charges and other revenues appertaining to such public securities, and the acquisition and application of such other revenues, the pledge and use of the proceeds thereof, and the establishment of liens thereon and funds therefor, appertaining to such public securities, except as provided in this article, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such public securities, acts, and proceedings, and



in such authorization, execution, sale, issuance, and payment, including without limiting the generality of the foregoing such acts and proceedings appertaining to such public securities all or any part of which have not been issued nor purportedly issued prior to April 27, 1963. Such outstanding public securities are and shall be, and such public securities not issued nor purportedly issued prior to said date shall be, after their issuance, binding, legal, valid, and enforceable obligations of the state or the public body issuing them in accordance with their terms and their authorizing proceedings, subject to the taking or adoption of acts and proceedings not had nor taken nor purportedly had nor taken prior to April 27, 1963, but required by and in substantial and due compliance with laws appertaining to any such public securities not issued nor purportedly issued prior to said date.

**Source:** L. 63: p. 896, § 17. C.R.S. 1963: § 125-8-17.

**11-54-118. Effect - limitations.** This article shall operate to supply such legislative authority as may be necessary to validate any refunding public security issued and any such acts and proceedings taken prior to April 27, 1963, which the general assembly could have supplied or provided for in the law under which such public securities were issued and such acts or proceedings were taken. This article shall be limited to the validation of public securities, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. Also this article shall not operate to validate, ratify, approve, confirm, or legalize any public security, act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and shall not operate to confirm, validate, or legalize any public security, act, proceeding, or other matter which has been determined prior to April 27, 1963, in any legal proceedings to be illegal, void, or ineffective.

**Source:** L. 63: p. 896, § 18. C.R.S. 1963: § 125-8-18.

**11-54-119. Liberal construction.** This article being necessary to secure the public health, safety, convenience, and welfare, it shall be liberally construed to effect its purposes.

**Source:** L. 63: p. 897, § 19. C.R.S. 1963: § 125-8-19.

## PUBLIC SECURITIES

### ARTICLE 55

#### Uniform Facsimile Signature of Public Officials Act

**Editor's note:** This article was numbered as article 6 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

11-55-101.	Short title.		brought.
11-55-102.	Definitions.	11-55-108.	Trust or fiduciary relationship between issuer and holder.
11-55-103.	Facsimile signature.		
11-55-104.	Use of facsimile seal.	11-55-109.	Moneys to revert to general or other fund.
11-55-105.	Violation - penalty.		
11-55-106.	Uniformity of interpretation.	11-55-110.	Payment authorized although suit for recovery barred.
11-55-107.	Limitations on actions		

**11-55-101. Short title.** Sections 11-55-101 to 11-55-106 shall be known and may be cited as the "Uniform Facsimile Signature of Public Officials Act".

**Source:** L. 69: R&RE, p. 1082, § 1. C.R.S. 1963: § 125-6-1.

**11-55-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Authorized officer” means any official of this state or any of its departments, agencies, institutions, or other instrumentalities, or any of its political subdivisions, whose signature to a public security or instrument of payment is required or permitted.

(2) “Facsimile signature” means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(3) “Instrument of payment” means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(4) “Public security” means a bond, note, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, institutions, or other instrumentalities, or by any of its political subdivisions.

**Source:** L. 69: R&RE, p. 1082, § 1. C.R.S. 1963: § 125-6-2.

**11-55-103. Facsimile signature.** (1) Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, but at least one signature required or permitted to be placed thereon shall be manually subscribed; and

(b) Any instrument of payment.

(2) Upon compliance with this article by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

**Source:** L. 69: R&RE, p. 1082, § 1. C.R.S. 1963: § 125-6-3.

**Cross references:** For effect of facsimile signatures on sewer system revenue bonds, see § 31-35-404 (7).

**11-55-104. Use of facsimile seal.** When the seal of this state or of any of its departments, agencies, institutions, or other instrumentalities, or of any of its political subdivisions, is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-4.

**11-55-105. Violation - penalty.** Any person who with intent to defraud uses on a public security or an instrument of payment: A facsimile signature, or any reproduction of it, of any authorized officer; or any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, institutions, or other instrumentalities, or of any of its political subdivisions, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-5. L. 77: Entire section amended, p. 871, § 28, effective July 1, 1979. L. 89: Entire section amended, p. 823, § 15, effective July 1. L. 2002: Entire section amended, p. 1472, § 44, effective October 1.

**Editor’s note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.



**11-55-106. Uniformity of interpretation.** This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-6.

**11-55-107. Limitations on actions brought.** (1) No action based upon any public security authorized and issued on or after July 1, 1969, shall be commenced more than eighteen years after the final maturity date of the issue of which such public security is one.  
(2) No action based upon any public security issued prior to July 1, 1969, shall be commenced more than eighteen years after the final maturity date of the issue of which such public security is one.

(3) No action based upon any claim for interest accrued on any public security, whether said claim is evidenced by interest coupons or not, shall be commenced after action based upon said public security has been barred.

(4) The provisions of this section shall be inoperative as to any public security unless the treasurer of the issuing political subdivision at least six months and not more than twelve months prior has sent to the holder of record of such public security, at his last known address as shown on the books of such treasurer, a notice of the provisions of this section. A copy of such letter of notice held in such treasurer's records shall be conclusive proof that the requirements of this subsection (4) have been complied with.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-7.

**11-55-108. Trust or fiduciary relationship between issuer and holder.** Any trust or fiduciary relationship between the issuer of any public security and the holder thereof, regarding the principal of or interest on such security, shall be conclusively presumed to have been repudiated on the maturity date of such security unless the same is presented for payment before the expiration of the applicable limitation period set forth in sections 11-55-107 to 11-55-110.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-8.

**11-55-109. Moneys to revert to general or other fund.** Any public moneys from whatever source derived remaining in any fund or account reserved, pledged, or otherwise held for payment of the principal of or interest on any public security on which action for collection has been barred shall revert to the general fund of the issuing authority.

**Source:** L. 69: R&RE, p. 1083, § 1. C.R.S. 1963: § 125-6-9.

**11-55-110. Payment authorized although suit for recovery barred.** Nothing contained in sections 11-55-107 to 11-55-110 shall be so construed as to prevent the payment of any public security, or the interest having accrued thereon prior to or at its maturity, after the period specified in section 11-55-107 has passed, and the issuing body of such public security is authorized by sections 11-55-107 to 11-55-110 to make such payment if it deems it in its best interests so to do.

**Source:** L. 69: R&RE, p. 1084, § 1. C.R.S. 1963: § 125-6-10.

ARTICLE 56

Public Securities Refunding Act

11-56-101.	Short title.	11-56-104.	Purpose of refunding.
11-56-102.	Legislative declaration - applicability.	11-56-104.5.	Disclosures by underwriters of financial matters related to refunding.
11-56-103.	Definitions.		

11-56-105.	General provisions - limitations.	bonds and other bonds - limitations.
11-56-106.	Refunding with bonds of another type.	11-56-112. Special obligation refunding bonds.
11-56-107.	Bond provisions.	11-56-113. Tax exemption - exceptions.
11-56-108.	Application of bond proceeds - procedures - limitations.	11-56-114. Conclusive determination of governing body that statutory limitations have been met.
11-56-109.	Proceeds of refunding bonds in escrow - investment - security - amounts.	11-56-115. Prior obligations not impaired.
11-56-110.	Sources of payment - limitations.	11-56-116. Construction of this article.
11-56-111.	Combination of refunding	11-56-117. Liberal construction.

**11-56-101. Short title.** This article shall be known and may be cited as the “Public Securities Refunding Act”.

**Source: L. 77:** Entire article added, p. 582, § 1, effective July 1.

**11-56-102. Legislative declaration - applicability.** The general assembly hereby declares that the orderly refunding of any revenue obligation or any general obligation bond and any other lawful general obligation indebtedness by any public body of the state, as defined in section 11-56-103 (7), when advantageous to the public body or persons within the public body, will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and of the people of the state of Colorado. It is the intent of this article to provide a consistent mechanism for refunding for such public bodies of the state.

**Source: L. 77:** Entire article added, p. 582, § 1, effective July 1.

**11-56-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Escrow supplement” means any funds or moneys (other than bond proceeds) of a public body, legally available for the purpose, which are placed in an escrow or trust account established under the provisions of this article to be used and expended, together with the proceeds of refunding bonds or special obligation refunding bonds, or both, to accomplish the purposes of such escrow or trust account.

(2) Repealed.

(3) “General obligation” means general obligation bonds or any other lawful general obligation of a public body constituting a debt or indebtedness of such public body.

(4) “Governing body” means a city council, board of trustees, commission, board of county commissioners, board of directors, or other legislative body of a public body in which the legislative powers of such public body are vested.

(5) (a) “Net effective interest rate” of a proposed issue of refunding bonds means the net interest cost of said refunding issue divided by the sum of the products derived by multiplying the principal amounts expressed in one thousand dollar units of such refunding issue maturing on each maturity date by ten times the number of years from the date of said proposed refunding bonds to their respective maturities.

(b) “Net effective interest rate” of outstanding obligations to be refunded means the net interest cost of said obligations to be refunded divided by the sum of the products derived by multiplying the principal amounts expressed in one thousand dollar units of such obligations to be refunded maturing on each maturity date by ten times the number of years from the date of the proposed refunding bonds to the respective maturities of the obligations to be refunded. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the obligations to be refunded.

(6) (a) “Net interest cost” of a proposed issue of refunding bonds means the total amount of interest to accrue on said refunding bonds from their date to their respective



maturities, less the amount of any premium above par or plus the amount of any discount below par, at which said refunding bonds are being or have been sold.

(b) "Net interest cost" of outstanding obligations to be refunded means the total amount of interest which would accrue on said outstanding obligations from the date of the proposed refunding bonds to the respective maturity dates of said outstanding obligations to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the obligations to be refunded.

(7) "Public body" means the transportation commission; any state educational institution, or other state institution, its board of regents, or other governing body thereof constituting a body corporate; any county; any municipality as defined by section 31-1-101 (6), C.R.S.; any school district; any special district, including any local government agency, corporation, quasi-municipal corporation, or other entity, organized or acting pursuant to the provisions of title 32 (except article 8), C.R.S.; and any water conservancy district, city housing authority, county housing authority, urban renewal agency, community redevelopment agency, any other corporate district, any other corporate authority, any corporate commission, or any other political subdivision of this state constituting a body corporate.

(8) "Revenue obligation" means revenue bonds or any other obligation payable solely from and pledging only specified income or revenue of the public body, which bonds or obligations do not constitute a debt or indebtedness of such public body.

(9) "Special obligation refunding bonds" means bonds issued by the public body pursuant to section 11-56-112.

**Source:** L. 77: Entire article added, p. 582, § 1, effective July 1. L. 81: (7) amended, p. 1611, § 2, effective July 1. L. 89: (2) repealed, p. 1135, § 85, effective July 1. L. 91: (7) amended, p. 1057, § 10, effective July 1.

**11-56-104. Purpose of refunding.** (1) A refunding of outstanding obligations of a public body may be accomplished pursuant to this article by the issuance of bonds for refunding, paying, and discharging all or any part of such outstanding obligations, including a portion of one or more issues of such obligations and including any interest thereon in arrears or about to become due, and for one or more of the following purposes:

(a) Avoiding or terminating any default in the payment of interest on or principal of, or both interest on and principal of, said obligations;

(b) Reducing the net effective interest rate of said obligations;

(c) Reducing total interest payable over the life of the obligations, by issuing bonds of a shorter term, or at a lower net interest cost, or having a lower net effective interest rate;

(d) Reducing the total principal and interest payable on such obligations or the principal and interest payable thereon in any particular year or years, or effecting other economies;

(e) Modifying or eliminating restrictive contractual limitations appertaining to such obligations, to the incurring of additional indebtedness or obligations, or to any system, facility, or improvement appertaining thereto;

(f) Postponing the maturity of all or any part or portion of said obligations to a later date, subject to the limitations in section 11-56-107;

(g) Substituting an issue of bonds for a note or notes, or other obligations, including but not limited to any obligation issued in anticipation of the later issuance of bonds;

(h) Any combination of the foregoing purposes specified in this subsection (1).

(2) In making the computations necessary or appropriate pursuant to subsection (1) of this section for a refunding transaction in which all or any portion of the principal of or interest on the refunding bonds is to be paid from the proceeds of such refunding bonds or the interest or other income to be derived from the investment of such proceeds, including any refunding transaction as a part of which special obligation refunding bonds are to be issued, only those amounts with regard to bonds issued for refunding purposes which are to be payable by the public body from sources other than refunding bond proceeds and the interest and other income derived from the investment of such proceeds need to be considered.

**Source: L. 77:** Entire article added, p. 584, § 1, effective July 1.

**11-56-104.5. Disclosures by underwriters of financial matters related to refunding.**

(1) (a) Whenever an underwriter proposes to refund the bonds of any public body, and competitive proposals have not been requested, the underwriter shall, simultaneously with the submission of the proposal, disclose, in writing, to the governing body of the public body, the entire income, from all sources, which he anticipates receiving if his proposal is accepted, specifying all such sources and amounts, as well as disclosing all expenses which he anticipates the public body will incur as a part of such refunding transaction. Any governing body may require such disclosure whenever any refunding proposals are to be considered.

(b) The underwriter shall also provide the governing body of the public body with a comparison of annual debt service requirements before and after refunding, by year and amount, including funds which are required in addition to bond proceeds. Such comparison shall also show the present value of all annual differences in debt service requirements, using as a discount factor the net effective interest rate of the refunding bonds. All such figures shall be computed from the date on which the transaction is closed and shall include funds provided by the issuer as a reduction of, or an addition to, debt service requirements. Funds provided by the issuer in excess of accrued principal and interest, and earnings on the funds, over the life of, and compounded at the net effective interest rate of, the refunding bonds, shall also be disclosed.

(2) The information specified in subsection (1) of this section shall be updated to the date of closing at the time of closing. Any governing body may require an additional disclosure at such time as final figures are available.

**Source: L. 78:** Entire section added, p. 304, § 1, effective March 29.

**11-56-105. General provisions - limitations.** (1) Any revenue obligations or general obligations issued or incurred by any public body may be refunded without an election by the public body issuing or incurring the same or any successor thereof, except as otherwise provided by this section, in the name of the public body which issued or incurred the obligation or indebtedness being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto.

(2) (a) The bonded indebtedness of any school district outstanding at the time of the inclusion of all such district's territory in another district by reorganization, consolidation, dissolution, or any other lawful means may be refunded by action of the governing body of the district, including such territory at the time of such refunding, whether or not such indebtedness has been assumed by the district including such territory.

(b) When an entire school district having outstanding bonded indebtedness has been divided and parts thereof included within two or more other districts by any lawful means, the refunding of such indebtedness shall require affirmative action by a majority of the members of the governing body of each of the districts within which any part of the territory of such district owing said indebtedness is then included, except as is provided in this article to the contrary.

(c) The bonded indebtedness of any school district outstanding at the time any territory of said district is detached therefrom by any lawful means, and which district has retained its lawful corporate existence subsequent to the detachment of such territory from said district, may be refunded by action of the governing body of such district from which territory has been detached with or without concurrence or action by the governing body of any district within which all or any part of said detached territory is included, and such districts from which territory has been detached and which retain their corporate existence subsequent to detachment are specifically exempted from the requirements and provisions of paragraph (b) of this subsection (2).

(3) (a) General obligation refunding bonds may be issued to refund all or any portion of one or more outstanding general obligations of a public body, but no two or more



outstanding general obligations, or portions thereof, may be refunded by a single issue of refunding bonds unless the taxable property upon which tax levies are being made for payment of each such outstanding general obligation is identical to the taxable property on which such levies are being made for the payment of all other outstanding general obligations proposed to be refunded by such single issue of refunding bonds, and the same tax and debt limitations, if any, applicable to each obligation proposed to be refunded by such single issue of refunding bonds are also applicable to all other obligations to be refunded by such single issue.

(b) Refunding revenue bonds may be issued to refund all or any portion of one or more outstanding revenue obligations, but no two or more outstanding revenue obligations may be refunded by a single issue of refunding revenue bonds unless all of the outstanding revenue obligations could be issued as a single obligation at the time of the refunding. Subject to the provisions and limitations of section 11-56-106, general obligation refunding bonds may be issued to refund all or any portion of one or more outstanding revenue obligations, but no two or more outstanding revenue obligations may be refunded by a single issue of general obligation refunding bonds unless the property subject to taxation for the purpose for which each outstanding revenue obligation to be refunded was issued is identical to the property subject to taxation for the purpose for which each other outstanding revenue obligation to be refunded with such single issue of refunding revenue bonds was issued, and the tax and debt limitations, if any, applicable to taxes levied for general obligations issued for all of the purposes for which the outstanding revenue obligations to be refunded with such single issue of general obligation bonds were issued are the same.

(4) Refunding bonds may be delivered in exchange for the obligations to be refunded or may be sold in such manner as determined by the governing body in the best interests of the public body and the proceeds of said sale applied as provided in this article. Said bonds may be sold at, above, or below the par value thereof if the price thereof will not result in a net effective interest rate in excess of the maximum net effective interest rate authorized by the governing body.

(5) No revenue obligation or general obligation may be refunded unless the holder thereof voluntarily surrenders the same for exchange or payment or the said obligations either mature or are callable by the issuer for prior redemption under their terms within twenty years from the date of issuance of the refunding bonds, and provision shall have been made in said refunding for paying the obligations being refunded within said period of time.

(6) (a) A public body shall be authorized to utilize an escrow supplement in accomplishing any refunding procedures undertaken pursuant to this article; except where the purpose of the refunding is to accomplish the purposes designated in section 11-56-104 (1) (b), (1) (c), or (1) (d), then:

(I) Where general obligations constituting a debt or indebtedness of the public body are to be refunded, such escrow supplement shall not exceed the aggregate principal and net interest cost of the obligations to be refunded less the aggregate principal and net interest cost of the refunding bonds, other than special obligation refunding bonds;

(II) Where general obligation refunding bonds are proposed to be issued to refund revenue obligations, pursuant to section 11-56-106, no escrow supplement in excess of the amount by which the principal amount of the obligations to be refunded exceeds the principal amount of the refunding bonds, other than special obligation refunding bonds, shall be permitted unless approved as a part of the refunding question submitted to the electors.

(b) Neither the principal of nor the interest on any special obligation refunding bonds issued in conjunction with any other refunding bonds pursuant to this article shall be considered when making any of the computations required by this subsection (6).

(c) The provisions of this subsection (6) shall not apply to the refunding bonds where the indebtedness refunded was incurred pursuant to subsection (3) of section 6 of article XI of the state constitution.

(7) Whenever any school district issues refunding bonds under the provisions of this article, the governing body shall provide for registration of the bonds in the manner

provided for other school bonds by section 22-42-121, C.R.S., which registration shall have the same legal effect as specified in section 22-42-121, C.R.S.

(8) Any school district which issues refunding bonds under the provisions of this article shall file a report within sixty days after the issuance of said bonds with the state board of education. The report shall indicate the principal amount of obligations refunded, the net effective interest rate of both the obligations refunded and the refunding bonds, the net interest cost of both the obligations refunded and the refunding bonds, all school district costs incident to the issuance of refunding bonds, including those of the escrow agent, and such other items as may be determined by the state board of education.

(9) The issuance of refunding bonds by any public body for purposes of and in the manner authorized by this article, or by the provisions of any other law shall not be interpreted to be the creation of debt or indebtedness such that the same would require the approval at an election in accordance with the constitution or laws of this state, and no such approval shall be required for the issuance of such refunding bonds, except as specifically provided by this article. Any obligations which have been refunded, as provided in this article, either by immediate payment or redemption and retirement or by the placement of proceeds of refunding bonds in escrow, shall not be deemed outstanding for purposes of determining compliance with debt limitations or for determination of the relative position of the pledge or lien on any fund or moneys held by the refunding bonds from and after the date on which sufficient moneys are placed either with the paying agent of such outstanding obligations for the purpose of immediately paying or redeeming and retiring such bonds or with the escrow agent for the purpose of paying or redeeming and retiring such bonds at a designated future date. Sufficiency of any moneys for said purposes shall be determined as provided in section 11-56-109.

**Source: L. 77:** Entire article added, p. 584, § 1, effective July 1.

#### ANNOTATION

**Electoral approval of a proposed refunding is not required if the specific provisions of the "Public Securities Refunding Act" are satis-**

**fied.** In re Colorado Springs Spring Creek Gen. Imp. Dist., 177 Bankr. 684 (Bankr. D. Colo. 1995).

**11-56-106. Refunding with bonds of another type.** (1) Subject to the provisions of subsections (2), (3), and (4) of this section, nothing contained in this article shall be construed as authorizing a public body to issue any obligations constituting a debt or indebtedness for the purpose of refunding obligations which do not constitute debt or indebtedness.

(2) Any revenue obligations of a public body may be refunded by the issuance of general obligation refunding bonds only if the public body would be authorized by law to issue general obligations for the purposes for which such revenue obligations were originally issued at the time of the issuance of said refunding bonds, whether or not the public body was so authorized at the time of the issuance of such revenue obligations.

(3) If the issuance of general obligations for a particular purpose would be conditioned upon their approval by the qualified electors of the public body at an election, any general obligation refunding bonds proposed to be issued to refund revenue obligations originally issued for such purpose may be issued only if issuance of the refunding bonds has been approved at an election in the same manner.

(4) If a debt limitation pertains to general obligation bonds or other general obligations of a public body issued for a particular purpose, then no general obligation bonds shall be issued to refund any revenue obligations issued for such purpose in any principal amount which would cause such debt limitation to be exceeded.

**Source: L. 77:** Entire article added, p. 587, § 1, effective July 1.

**11-56-107. Bond provisions.** (1) The sum of the principal amount of any refunding revenue bonds may exceed the principal amount of the revenue obligations to be refunded



thereby by such amount as is useful to effect the refunding if the sum of the aggregate principal and net interest cost of the refunding revenue bonds for the period ending on the scheduled final maturity date of the revenue obligations to be refunded, without regard to any redemptions that may be made prior to such scheduled maturity date, is the same or less than the aggregate principal and net interest cost of the revenue obligations to be refunded for the same time period, excluding from the computation of the aggregate principal and net interest cost of the refunding revenue bonds any interest on the obligations to be refunded in arrears or about to become due and payable which is capitalized with the proceeds of the refunding revenue bonds and any interest on the refunding revenue bonds which is capitalized with the proceeds of the refunding revenue bonds. The principal amount of any general obligation refunding bonds shall not exceed the original authorized principal amount of the general obligations to be refunded. Except for refunding bonds where the indebtedness refunded was incurred pursuant to subsection (3) of section 6 of article XI of the state constitution, the principal amount of any general obligation bonds issued to refund outstanding revenue obligations shall not exceed the outstanding principal amount of the revenue obligations to be refunded, except to the extent that a larger principal amount of refunding bonds is authorized at an election pursuant to section 11-56-106 (3) or in the manner otherwise provided by law for incurring new indebtedness.

(2) Neither the principal of nor the interest on any special obligation refunding bonds issued in conjunction with any other refunding bonds pursuant to this article shall be considered when making any of the computations required by subsection (1) of this section.

(3) The principal amount of the refunding bonds may also be less than or the same as the principal amount of the obligations being refunded, so long as provision is duly and sufficiently made for payment in full and discharge of such refunded obligations.

(4) As the governing body may determine, any refunding bonds issued under this article shall:

- (a) Be of a convenient denomination;
- (b) Mature at such time not exceeding forty years from the date of said bonds as determined by the governing body;
- (c) Bear interest, which may be evidenced by one or more sets of coupons, at a specified rate, payable annually or semiannually, but the first interest payment may be for interest accruing for any other period not to exceed three years;
- (d) Be made payable, both principal and interest, in lawful money of the United States, at such place as determined by the governing body;
- (e) Be negotiable in form and executed in substantially the same manner as prescribed for other bonds of such public body.

(5) The right to redeem all or part of said refunding bonds prior to their maturity, and the order of any such redemption, may be reserved in the ordinance or resolution of the governing body, as the case may be, authorizing the issuance of the bonds and, if so reserved, shall be set forth on the face of said bonds. Such redemption may be with or without the payment of a premium not exceeding five percent of principal, as determined by the governing body.

(6) Any ordinance or resolution authorizing, or any escrow agreement or trust indenture or other instrument appertaining to, any refunding bonds issued under this article may provide that each refunding bond shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions and limitations of this article, and all refunding bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

**Source:** L. 77: Entire article added, p. 587, § 1, effective July 1. L. 83: (1) amended, p. 507, § 1, effective April 22.

**11-56-108. Application of bond proceeds - procedures - limitations.** (1) The proceeds derived from the issuance of refunding bonds under the provisions of this article, together with other legally available funds, if any, of the public body, shall either be immediately applied to the payment or redemption and retirement of the obligations to be refunded and the cost and expense incident to such procedures or shall be placed in escrow

or trust to be applied for the purposes and in the manner required or permitted under this article as the governing body may determine.

(2) Proceeds of refunding bonds, including proceeds of special obligation refunding bonds, if any, and other moneys which are placed in escrow or trust, pursuant to the determination and direction of the governing body, shall be used and applied for the following purposes and in the following manner, the details of which shall be set forth in full and at length in the escrow agreement:

(a) For the purpose of paying the principal of, interest on, and prior redemption premiums, if any, for the obligations refunded only;

(b) For the purpose of paying all or specified portions of the principal of, interest on, and prior redemption premiums, if any, for the obligations to be refunded or the refunding bonds or any combination thereof;

(c) For the purpose of paying all of the principal of, interest on, and prior redemption premiums, if any, for the obligations refunded, and all of the principal of, interest on, and prior redemption premiums, if any, for all special obligation refunding bonds issued as a part of the refunding transaction;

(d) In specified portions, for one or more or all of the purposes described in this subsection (2).

(3) The escrow agreement shall in each case designate and set forth with regard to the obligations refunded, the refunding bonds, and the special obligation refunding bonds, if any:

(a) Any amounts of principal, interest, prior redemption premiums, and costs and expenses of the refunding transaction to be payable from the escrow or trust account; including, without limiting the generality of the foregoing, the capitalization of interest on the refunding bonds for such period of time as the governing body may determine;

(b) Whether each such amount is to be payable:

(I) From funds originally placed in such escrow or trust account; or

(II) From the interest or other income derived from the investment of the funds originally placed in such escrow or trust account; or

(III) From a specified combination of subparagraphs (I) and (II) of this paragraph (b), and, if so, in what proportions; or

(IV) From any moneys in such account without specification or restriction; and

(c) The order and priority, if any, which is to govern the use and application of all or any part of the funds held in said escrow or trust account to payment of any such amounts.

(4) The incidental costs and expenses of the refunding transaction may be paid by the purchaser of the refunding bonds, or by the public body from any general fund, subject to appropriations therefor and any other limitations on the use thereof as otherwise provided by law, or from other available revenues of the public body under the control of the governing body, or from the proceeds of the refunding bonds, or from the interest or other yield derived from the investment of any refunding bond proceeds or other moneys placed in the escrow or trust, or from any other sources legally available therefor, or any combination thereof, as the governing body may determine.

(5) Any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon or the principal thereof, or to both interest and principal, or may be deposited in a reserve therefor, or may be used to pay refunded obligations by deposit in the escrow or trust account, or otherwise, or may be used to defray any incidental costs and expenses appertaining to the refunding, or any combination thereof, as the governing body may determine. In the event of any use of such accrued interest or premium other than for payment of interest on or principal of the refunding bonds, or as a reserve therefor, the net interest cost figures on the refunding bonds used in making the computations required in sections 11-56-105 (6) and 11-56-107 (1) shall be adjusted upward accordingly to reflect the amounts actually to be paid by the public body.

(6) For the purpose of implementing the provisions of this article, the governing body shall have the power to enter into escrow agreements and to establish escrow or trust accounts with any commercial bank having full trust powers located within the state of



Colorado and which is a member of the federal deposit insurance corporation under protective covenants and agreements whereby such accounts shall be fully secured as provided by section 11-56-109.

**Source:** L. 77: Entire article added, p. 589, § 1, effective July 1. L. 83: (3)(a) amended, p. 508, § 2, effective April 22.

**11-56-109. Proceeds of refunding bonds in escrow - investment - security - amounts.** (1) Moneys placed in any escrow or trust shall not necessarily be limited to proceeds of refunding bonds but may include other moneys legally available for the purpose.

(2) Any moneys in escrow or trust, pending use for their intended purpose, may be invested or reinvested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(3) The escrow agent shall continuously secure any moneys placed in escrow or trust and not so invested or reinvested in securities by a pledge of such securities in a principal amount at all times at least equal to the total uninvested moneys held in such escrow or trust in strict accordance with the provisions of the escrow agreement. The requirements of this subsection (3) shall not apply with regard to any such uninvested moneys to the extent and during any time the same are fully insured by the federal deposit insurance corporation.

(4) Such moneys and investments in the escrow or trust account, together with the interest or other gain to be derived from any such investments, shall at all times be at least sufficient to make all of the payments required to be made pursuant to the escrow agreement in the manner and at the times specified in said agreement.

(5) The computations made in determining such sufficiency shall be verified by a certified public accountant licensed to practice in this state.

(6) No purchaser of any refunding bond issued under this article shall be responsible in any manner for the application of the bond proceeds or other moneys by the public body, the governing body, or any of the officers, agents, or employees of the public body.

**Source:** L. 77: Entire article added, p. 590, § 1, effective July 1. L. 89: (2) and (3) amended, p. 1106, § 7, effective July 1.

**11-56-110. Sources of payment - limitations.** Refunding bonds, other than special obligation refunding bonds, may be made payable from, and the governing body may pledge to the payment of such refunding bonds, any tax, or any income or revenue of the public body from any source, or both such taxes and such income or revenue, which could have been legally pledged to and used for the payment of the obligations being refunded at the time such obligations being refunded were issued or which could legally be pledged to and used for the payment of the obligations being refunded if the same were to be issued at the time of the refunding, as the governing body may determine, notwithstanding the pledge of such taxes, income or revenue for the payment of the outstanding obligations being refunded is thereby modified. In no event, however, shall any taxes, income, or revenues be pledged for the payment of any refunding bonds which could not have been lawfully pledged for the payment of the obligations being refunded because of the lack of the required approval of such pledge by the electors qualified to vote on the issuance of the obligations being refunded, or because of limitations in the election question authorizing their issuance, unless the refunding bonds and such pledge are similarly authorized by the electors at an election in substantially the manner required by law for the issuance of the obligations being refunded.

**Source:** L. 77: Entire article added, p. 591, § 1, effective July 1.

**11-56-111. Combination of refunding bonds and other bonds - limitations.** Any refunding bonds and bonds for any other purpose authorized by any other law may, in the discretion of the governing body, be issued separately or in combination in one or more

series by the public body, subject, however, to the same limitations provided in section 11-56-105 (3) for combined refunding of two or more outstanding obligations.

**Source: L. 77:** Entire article added, p. 591, § 1, effective July 1.

**11-56-112. Special obligation refunding bonds.** (1) In addition to and in combination with the refunding bonds authorized by this article, the public body may concurrently issue special obligation refunding bonds, for the purpose of providing additional funds with which to accomplish the refunding of outstanding general obligations or outstanding revenue obligations. Such special obligation refunding bonds shall be payable solely from amounts pledged under the escrow or trust agreement derived from certain specified interest or principal, or both interest and principal, payments on the investments in said escrow or trust account.

(2) The total principal amount of special obligation refunding bonds shall not exceed the sum of the following items reduced by the total principal amount of refunding bonds, other than special obligation refunding bonds, to be issued as a part of such refunding transaction:

(a) The total outstanding principal amount of the obligations being refunded;

(b) The prior redemption premium, if any, payable on that portion of the obligations being refunded which are to be called for redemption prior to maturity, as set forth in the ordinance or resolution authorizing the refunding bonds;

(c) The total accrued and unaccrued interest payable on the obligations refunded to stated maturity dates or to the dates at which all or specified portions of the refunded obligations are to be called for redemption prior to maturity, as set forth in the ordinance or resolution authorizing the refunding bonds, less the amount of any such accrued interest deposited into the escrow account by the issuer; and

(d) All costs incurred in the authorization, sale, issuance, and delivery of the refunding bonds and the special obligation refunding bonds.

(3) The public body shall have no authority or power, at any time or in any manner, to pledge its credit, or its taxing power or any other funds, moneys, income, or revenues of such public body other than as specified in this section, to the payment of the principal of or interest on the special obligation refunding bonds issued pursuant to this section, nor shall such special obligation refunding bonds be deemed to be a debt or indebtedness of the public body or the state of Colorado, and such condition shall be set forth on the face of the bonds; except that such public body may pledge any other taxing power, funds, moneys, income, or revenues of such public body as additional security for the special obligation refunding bonds.

(4) The general provisions of this article relating to refunding obligations shall equally apply to special obligation refunding bonds, except as otherwise provided in this article.

**Source: L. 77:** Entire article added, p. 591, § 1, effective July 1.

**11-56-113. Tax exemption - exceptions.** (1) Except as otherwise provided in this article, all general obligation refunding bonds, refunding revenue bonds, and special obligation refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

(2) Bonds issued pursuant to this article for the purpose of refunding outstanding obligations which were neither exempt from such taxation at the time issued or at the time of the refunding nor which would have been exempt from such taxation if originally issued at the time of the refunding, shall be subject to taxation to the same extent and in the same manner as the outstanding obligations for the refunding of which they are issued.

**Source: L. 77:** Entire article added, p. 592, § 1, effective July 1.

**11-56-114. Conclusive determination of governing body that statutory limitations have been met.** The determination of the governing body that the provisions and limita-



tions, in this article and any other applicable law, imposed upon the issuance of any bonds under this article, have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

**Source: L. 77:** Entire article added, p. 592, § 1, effective July 1.

**11-56-115. Prior obligations not impaired.** Nothing in this article shall be construed in any manner so as to impair the obligations of any refunding bonds issued or any refunding transaction, consummated by a public body prior to the enactment of this article, or otherwise to invalidate any such bond, obligation, or refunding transaction.

**Source: L. 77:** Entire article added, p. 592, § 1, effective July 1.

**11-56-116. Construction of this article.** The powers conferred by this article are in addition and supplemental to and not in substitution for, and the limitations imposed by this article shall not directly or indirectly modify, limit, or affect, the powers conferred by any other law. Bonds may be issued under this article without regard to the provisions of any other law, and if so issued, insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

**Source: L. 77:** Entire article added, p. 592, § 1, effective July 1.

**11-56-117. Liberal construction.** This article shall be liberally construed so that the legislative intent may be fulfilled.

**Source: L. 77:** Entire article added, p. 593, § 1, effective July 1.

ARTICLE 57

Public Securities

PART 1

GENERAL

11-57-101.	Applicability.	11-57-207.	Denomination, maturity, interest, and negotiability of securities - rate of interest.
11-57-102.	Form - payment and transfer of securities.	11-57-208.	Pledged revenues received or credited subject to immediate lien - priority and validity of lien.
11-57-103.	Determination by resolution or ordinance.	11-57-209.	Recourse against public entities officers and agents - acceptance of securities constitutes waiver and release.
11-57-104.	No restriction on other acts.	11-57-210.	Recital in securities conclusive evidence of validity and regularity of issuance.
11-57-105.	Records - registered public obligations.	11-57-211.	Meetings aided by telecommunications devices.

PART 2

SUPPLEMENTAL PUBLIC SECURITIES ACT

11-57-201.	Short title.	11-57-212.	Limitation of actions.
11-57-202.	Legislative declaration.	11-57-213.	Confirmation of actions and powers.
11-57-203.	Definitions.	11-57-214.	Investments.
11-57-204.	Election of applicability.		
11-57-205.	Delegation of authority.		
11-57-206.	Fixed and variable rates of in-		

## PART 1

## GENERAL

**11-57-101. Applicability.** This article applies to bonds, notes, warrants, certificates, or other securities evidencing loans or the advancement of moneys, to be issued by or on behalf of the state or any political subdivision thereof or any district, public board, commission, authority, or other public body corporate in the state pursuant to any general or special act or pursuant to any legislative or home rule charter.

**Source: L. 83:** Entire article added, p. 510, § 1, effective April 21.

**11-57-102. Form - payment and transfer of securities.** The securities described in section 11-57-101 shall be in such registered or bearer form, with or without interest coupons; be subject to such conditions for transfer; be subject to such provisions for conversion as to denomination or to bearer or registered form; be made registerable or payable, or both, by the treasurer or other officer of the issuing entity, or by such trustee, registrar, paying agent, or transfer agent within or without this state; be issued, transferred, and registered by such book entry; be in such denomination or denominations; bear such dates, signatures, and authentications; and be held in custody by such depository within or without this state, all as may be determined by the entity or the governing body of the entity authorized or empowered to issue such securities. Payment at designated due dates or in installments may be required by the authorizing proceedings to be by check, draft, or other medium of payment and need not be conditioned upon presentation of any security or coupon. Signatures on any printed securities issued under this article or any other statute may be manually subscribed or by facsimile, but any such printed security, other than an interest coupon, shall bear at least one manual signature, which, notwithstanding the provisions of section 11-55-103 (1) or any other law, may be that of an official of the issuing entity or of the trustee, registrar, or transfer agent.

**Source: L. 83:** Entire article added, p. 510, § 1, effective April 21.

**11-57-103. Determination by resolution or ordinance.** The determination of the body authorized or empowered to issue such securities required by section 11-57-102 shall be made in the resolution or ordinance authorizing the issuance of such securities or in any ordinance, resolution, or other instrument supplemental thereto.

**Source: L. 83:** Entire article added, p. 511, § 1, effective April 21.

**11-57-104. No restriction on other acts.** This article shall constitute an additional and separate grant of powers which may be exercised without regard to any other act which contains the same subject matter; except that this article shall not be deemed to be a restriction or limitation on the exercise of powers by an issuing entity under any other act or home rule legislation.

**Source: L. 83:** Entire article added, p. 511, § 1, effective April 21.

**11-57-105. Records - registered public obligations.** Records, with regard to the ownership of or security interests in registered public obligations, shall not be subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary.

**Source: L. 84:** Entire section added, p. 399, § 1, effective March 26.



## PART 2

## SUPPLEMENTAL PUBLIC SECURITIES ACT

**11-57-201. Short title.** This part 2 shall be known and may be cited as the “Supplemental Public Securities Act”.

**Source: L. 2000:** Entire part added, p. 133, § 1, effective August 2.

**11-57-202. Legislative declaration.** The general assembly hereby finds, determines, and declares that, due to the changes in the public securities market and recent technological developments, it is important to provide public entities with the option to elect to apply the provisions of this part 2 when issuing securities. This part 2 will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado. The general assembly intends for this part 2 to provide supplemental procedures for the issuance of securities otherwise authorized by law. However, nothing in this part 2 authorizes an issuing authority to waive an election otherwise required under section 20 of article X or article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in section 20 of article X.

**Source: L. 2000:** Entire part added, p. 133, § 1, effective August 2.

**11-57-203. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) “Act of issuance” means an ordinance, resolution, or decision to issue a security pursuant to delegated authority adopted by the issuing authority or officer of a public entity for the purpose of issuing a security or an amendment to such ordinance, resolution, or decision adopted by the issuing authority after the issuance of a security.

(2) “Issuing authority” means the governing body of any public entity in which the laws of this state vest the authority to issue securities through an act of issuance.

(3) “Public entity” means any state agency, state department, political subdivision, quasi-governmental entity, or any entity that is created by the constitution or statute of this state that is authorized to issue securities. Such entities include the following:

- (a) The state treasurer;
- (b) Any state educational institution, or other state institution, its governing board, or other issuing authority of such institution constituting a body corporate;
- (c) Any county or city and county;
- (d) Any municipality;
- (e) Any school district;
- (f) Any district organized or acting pursuant to the provisions of title 32, C.R.S.;
- (g) Any district or authority organized or acting pursuant to the provisions of title 29, 30, or 31, C.R.S.;
- (h) Any water conservancy district;
- (i) Any other political subdivision or governmental or quasi-governmental entity of this state;
- (j) Any other public entity as defined in section 24-75-601 (1), C.R.S.; or
- (k) A nonprofit corporation organized under the law of this state and created solely for the purpose of issuing securities on behalf of an entity listed in paragraphs (a) to (i) of this subsection (3).

(4) “Revenues” means all or any portion of any taxes, tolls, fees, rates, charges, assessments, grants, contributions, or other income and revenues received by the public entity.

(5) “Securities” means any financial contract, note, warrant, bond, certificate, or debenture authorized to be issued by a public entity under other laws of this state.

**Source: L. 2000:** Entire part added, p. 133, § 1, effective August 2. **L. 2004:** (1) and (3) amended, p. 948, § 1, effective May 21.

**11-57-204. Election of applicability.** (1) This part 2 is applicable to securities issued by any public entity if the issuing authority of such public entity elects in an act of issuance to apply all or any of the provisions of this part 2 to the issuance of such securities. If a public entity elects to apply a provision of this part 2 and such provision conflicts with a provision of another statutory law, the provision of this part 2 shall control. No provision of this part 2 shall be interpreted to modify or limit the rights and powers conferred on such public entity by any other provision of state law, unless the public entity elects to use such provisions in the issuance of its securities. This part 2 shall not modify or limit any provisions of articles 51 and 59 of this title.

(2) Nothing in this part 2 authorizes an issuing authority to waive an election otherwise required under section 20 of article X or article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in section 20 of article X.

**Source: L. 2000:** Entire part added, p. 134, § 1, effective August 2.

**11-57-205. Delegation of authority.** (1) The issuing authority of a public entity may, in the act of issuance, at any time, delegate to any member of the issuing authority, chief executive officer, or chief financial officer of the public entity the authority to sign a contract for the purchase of the securities or to accept a binding bid for the securities. Such delegation shall be effective for one year after adoption of the act of issuance or such shorter period as specified in the act of issuance. In addition to any determinations that may be delegated in accordance with other provisions of state law, the following determinations may be delegated to such member or officer without any requirement that the issuing authority approve such determinations:

- (a) The rate of interest on the securities;
- (b) The conditions on which and the prices at which the securities may be redeemed before maturity;
- (c) The existence and amount of any capitalized interest or reserve funds;
- (d) The price at which the securities will be sold;
- (e) The principal amount and denominations of the securities;
- (f) The amount of principal maturing in any particular year;
- (g) The dates on which principal and interest shall be paid;
- (h) The securities to be refunded, if any; and
- (i) Whether the securities will be secured by an assurance of payment as described in section 11-57-207 (2) and the terms of any agreement with the third party providing the assurance of payment.

(2) All terms of the securities other than the matters described in subsection (1) of this section shall be approved by the issuing authority of the public entity before the securities are delivered.

**Source: L. 2000:** Entire part added, p. 135, § 1, effective August 2. **L. 2004:** (1)(h) and (1)(i) added, p. 949, § 2, effective May 21. **L. 2008:** IP(1) amended, p. 626, § 1, effective August 5.

**11-57-206. Fixed and variable rates of interest for securities - agreement with third party for interest determinations.** The act of issuance authorizing the issuance of any securities or any trust indenture or other instrument created by such act of issuance may fix a rate or rates of interest, or provide for the determination of the rate or rates from time to time, by a designated agent according to the procedure specified in that act of issuance or other instrument. An issuing authority of a public entity may contract with or select any person to make such determinations.

**Source: L. 2000:** Entire part added, p. 135, § 1, effective August 2.

**11-57-207. Denomination, maturity, interest, and negotiability of securities - rate of interest.** (1) Any securities issued may:



(a) Mature at such time or times as determined by the public entity or as provided in section 11-57-205, not to exceed forty years;

(b) Bear interest at a rate or rates payable or compoundable at such intervals as determined by the public entity or as provided in section 11-57-205; and

(c) Be made payable in lawful money of the United States, at the office of the treasurer or other appropriate officer or employee of the public entity or any commercial bank or commercial banks within or without the state as may be authorized by the public entity.

(2) An issuing authority of a public entity may enter into an agreement with a third party for an assurance of payment of any principal, interest, or premiums due in connection with any securities issued by the issuing authority. The obligation of the issuing authority to reimburse that third party for any advances made pursuant to that agreement may be provided in that agreement, recited in those securities, or evidenced by another instrument. Such obligation shall be designated in the act of issuance as passed by such issuing authority that authorized the issuance of such securities or any other instrument. The issuing authority may assign its rights under that agreement.

**Source: L. 2000:** Entire part added, p. 136, § 1, effective August 2.

**11-57-208. Pledged revenues received or credited subject to immediate lien - priority and validity of lien.** (1) A public entity may pledge all or any portion of its revenues to the payment of its securities unless the use of any of such revenues is restricted by other laws of the state. In pledging the proceeds of an ad valorem property tax, an issuing authority may limit the rate of taxation or the amount of tax dollars that it is obligated to impose or collect to pay any securities as set forth in the act of issuance enacted by such body.

(2) The creation, perfection, enforcement, and priority of a pledge of revenues to secure or pay securities shall be governed by this section and the act of issuance passed by the issuing authority authorizing such securities. Revenues pledged for the payment of any securities, as received by or otherwise credited to the public entity, shall immediately be subject to the lien of each such pledge without any physical delivery, filing, or further act. The lien of each such pledge and the obligation to perform the contractual provisions made in the act of issuance or other instrument shall have priority over any or all other obligations and liabilities of the public entity, except as may be otherwise provided in this part 2, in the act of issuance, or in any other instrument. However, such pledges and liens shall be subject to any prior pledges and liens. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the public entity irrespective of whether such persons have notice of such liens.

**Source: L. 2000:** Entire part added, p. 136, § 1, effective August 2.

**11-57-209. Recourse against public entities officers and agents - acceptance of securities constitutes waiver and release.** If a member of the issuing authority, or any officer or agent of the public entity acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest, or prior redemption premiums. Such recourse shall not be available either directly or indirectly through the issuing authority or the public entity, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the securities and as a part of the consideration of their sale or purchase, any person purchasing or selling such public security specifically waives any such recourse.

**Source: L. 2000:** Entire part added, p. 137, § 1, effective August 2.

**11-57-210. Recital in securities conclusive evidence of validity and regularity of issuance.** An act of issuance providing for the issuance of public securities or an indenture may provide that the securities shall contain a recital that they are issued pursuant to the

supplemental public securities act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of such public securities after their delivery for value.

**Source: L. 2000:** Entire part added, p. 137, § 1, effective August 2.

**11-57-211. Meetings aided by telecommunications devices.** The act of issuance authorizing the issuance of securities may be adopted by the issuing authority at a meeting where one or more members of the issuing authority may participate in such meeting and may vote on such act of issuance through the use of telecommunications devices. Such participation may include but not be limited to the use of a conference telephone or similar communications equipment. Such participation through telecommunications devices shall constitute presence in person at such meeting. However, all such public meetings shall have at least one person physically present at the designated meeting area to ensure that the public meeting is in fact accessible to the public.

**Source: L. 2000:** Entire part added, p. 137, § 1, effective August 2.

**11-57-212. Limitation of actions.** No legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of securities by a public entity shall be commenced more than thirty days after the authorization of such securities.

**Source: L. 2000:** Entire part added, p. 137, § 1, effective August 2. **L. 2004:** Entire section amended, p. 949, § 3, effective May 21.

**11-57-213. Confirmation of actions and powers.** (1) In its discretion, the public entity may file a petition prior to the issuance of securities under the supplemental public securities act in the district court in any county in which the public entity or a portion thereof is located for a judicial examination and determination of any power conferred; any securities issued by the public entity or authorized to be issued by the public entity; any taxes, assessments, fees, or charges levied or otherwise made by the public entity or contracted to be levied by the public entity or otherwise made by the public entity; or of any other act, proceeding, or contract of the public entity whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement; proposed securities of the public entity to defray in whole or in part the cost of the project or any refunding; the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto; or any combination thereof.

(2) A petition filed under subsection (1) of this section shall set forth the facts upon which the validity of such power, security, tax, assessment, fee, charge, act, proceeding, or contract is founded. The presiding officer of the public entity shall verify the petition before it is filed with the public entity court by signing said petition.

(3) Any action filed under this section shall be in the nature of a proceeding in rem. The district court shall have jurisdiction over all parties interested in the proceeding upon the publication and posting of a notice in accordance with this section.

(4) The clerk of the district court in which a petition is filed shall provide notice of such filing. The notice shall include a brief outline of the contents of the petition; the time, date, and location of the hearing; and the location where a complete copy of any documents at issue in the petition may be examined. The clerk shall serve the notice by:

(a) Publishing the notice at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipalities and counties in which the public entity is located; and

(b) Posting the notice in the office of the public entity at least thirty days prior to the date of the hearing on the petition.

(5) Any resident in the public entity or owner of real property within the boundaries of the public entity may appear at the hearing by either filing a motion to dismiss or an answer



to the petition on or before the hearing date or within such time as the court may allow. The petition shall be taken as confessed by all persons who fail to appear.

(6) The petition and notice shall be sufficient to give the district court jurisdiction, and, upon hearing, the district court shall examine and determine all matters affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(7) Unless otherwise specified in this section, the Colorado rules of civil procedure shall govern any actions filed under this section in matters of pleading and practice.

(8) Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(9) Review of the judgment of the district court may be available as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the district court within thirty days.

(10) The district court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(11) All cases in which there may arise a question of validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

(12) Nothing in this section applies to any condemnation of property.

**Source: L. 2000:** Entire part added, p. 137, § 1, effective August 2.

**11-57-214. Investments.** Income received from any legal investment may be deposited by the public entity in any fund or account that the public entity maintains.

**Source: L. 2000:** Entire part added, p. 139, § 1, effective August 2. **L. 2004:** Entire section amended, p. 949, § 4, effective May 21.

## ARTICLE 58

### Public Securities Information Reporting Act

11-58-101.	Short title.		dards - cash fund. (Re-
11-58-102.	Legislative declaration.		pealed)
11-58-103.	Definitions.	11-58-107.	Immunity from liability.
11-58-104.	Applicability of article.	11-58-108.	Transfer of moneys to general
11-58-105.	Annual information report.		fund - repeal. (Repealed)
11-58-106.	Committee to develop stan-		

**11-58-101. Short title.** This article shall be known and may be cited as the "Public Securities Information Reporting Act".

**Source: L. 91:** Entire article added, p. 667, § 1, effective June 1.

**11-58-102. Legislative declaration.** The general assembly hereby declares that the annual disclosure of financial and credit information for nonrated public securities will benefit both issuers and investors by expanding and stabilizing the market for nonrated public securities and thereby improve the marketability of such securities. The general assembly further declares that issuers of nonrated public securities are strongly encouraged to make such annual disclosure of financial and credit information and to make such disclosed information available to all of their investors.

**Source: L. 91:** Entire article added, p. 667, § 1, effective June 1.

**11-58-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Annual information report” means a written report completed on forms prescribed by the director of the department of local affairs.

(2) “Conduit financing” means an outstanding nonrated public security for which a private profit making or nonprofit making issuer constitutes the ultimate credit source for the security.

(3) (Deleted by amendment, L. 2002, p. 541, § 1, effective October 1, 2002.)

(4) “Issued to the public” means offers and sales of nonrated public securities by an issuer except to the extent such securities have been offered and sold in accordance with federal rule 15c 2-12 (d) (1) of the federal “Securities Exchange Act of 1934”.

(5) “Issuer” means the state, any political subdivision thereof, and any district, board, commission, authority, or other public corporate body issuing any nonrated public securities in Colorado.

(6) “Make public” means to file the annual information report with the department of local affairs.

(7) “National rating service” means Moody’s Investors Service, Inc., Standard and Poor’s Corporation, Fitch Investors Service, Inc., or any other nationally recognized organization which regularly rates public securities.

(8) “Nonrated public securities” means bonds, notes, warrants, certificates, or other securities evidencing loans or the advancement of moneys which have been issued to the public by or on behalf of an issuer and have not been rated by a national rating service, but excluding conduit financing and any such obligation payable in full within one year after the date of its issuance; except that nothing in this article shall be construed to apply to any bond, note warrant, certificate, or other security issued for less than one million dollars.

(9) “Outstanding” in connection with any nonrated public security, means any nonrated public security which at the time has been issued, authenticated, and delivered under a financing document, and which has not been paid in full, cancelled, or deemed paid and which is otherwise outstanding in accordance with the terms of such financing document.

**Source:** L. 91: Entire article added, p. 667, § 1, effective June 1. L. 2002: (1), (3), and (6) amended, p. 541, § 1, effective October 1. L. 2004: (4) amended, p. 950, § 5, effective May 21.

**Cross references:** For the “Securities Exchange Act of 1934”, see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

**11-58-104. Applicability of article.** This article applies to the state, any political subdivision thereof, and any district, board, commission, authority, or other public corporate body in the state if there are at the time outstanding nonrated public securities which such entity has issued to the public or on its behalf has caused to be issued to the public.

**Source:** L. 91: Entire article added, p. 668, § 1, effective June 1.

**11-58-105. Annual information report.** Each issuer of nonrated public securities issued pursuant to sections 31-25-107 (9) and 31-25-807 (3), C.R.S., and title 32, C.R.S., shall make public within sixty days following the end of each of such issuer’s fiscal year ending on or after December 31, 1991, an annual information report or reports with respect to any of such issuer’s nonrated public securities which are outstanding as of the end of each such fiscal year. Nothing shall preclude any issuer not so required by this article from filing a report pursuant to this article.

**Source:** L. 91: Entire article added, p. 669, § 1, effective June 1. L. 2002: Entire section amended, p. 541, § 2, effective October 1.



**11-58-106. Committee to develop standards - cash fund. (Repealed)**

**Source:** L. 91: Entire article added, p. 669, § 1, effective June 1. L. 96: (3) and (4) repealed, p. 1268, § 190, effective August 7. L. 2002: Entire section repealed, p. 542, § 4, effective October 1.

**11-58-107. Immunity from liability.** The issuer or any public employee thereof shall be immune from liability for information contained in or omitted from any annual information report concerning a nonrated public security unless the inclusion or omission of such information was willful and wanton for the purpose of materially misleading actual or potential holders of such nonrated public security.

**Source:** L. 91: Entire article added, p. 670, § 1, effective June 1.

**11-58-108. Transfer of moneys to general fund - repeal. (Repealed)**

**Source:** L. 2002: Entire section added, p. 542, § 3, effective October 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective July 1, 2003. (See L. 2002, p. 542.)

**ARTICLE 59****Colorado Municipal Bond  
Supervision Act**

**Editor's note:** Section 11-59-120 provides that the rule-making authority of the securities commissioner shall take effect July 1, 1991.

11-59-101.	Short title.	11-59-110.	Exemptions from registration.
11-59-102.	Legislative declaration.	11-59-111.	Unlawful representation concerning registration or exemption.
11-59-103.	Definitions.	11-59-112.	Misleading filing.
11-59-104.	General powers of securities commissioner.	11-59-113.	Investigations - subpoenas.
11-59-105.	Colorado municipal bond supervision advisory board - creation.	11-59-114.	Enforcement by injunction.
11-59-106.	Requirement for registration of district bonds.	11-59-115.	Criminal and civil penalties and damages.
11-59-107.	General registration provisions.	11-59-116.	Administrative proceedings.
11-59-108.	Registration of bonds.	11-59-117.	Judicial review of orders.
11-59-109.	Denial, suspension, or revocation of registration.	11-59-118.	Interpretation and interpretive opinions.
		11-59-119.	Collection of fees - division of securities cash fund.
		11-59-120.	Effective date.

**11-59-101. Short title.** This article shall be known and may be cited as the "Colorado Municipal Bond Supervision Act".

**Source:** L. 91: Entire article added, p. 2404, § 1, effective January 1, 1992.

**11-59-102. Legislative declaration.** (1) The general assembly finds that:

(a) The financial reputation and integrity of all local governments and political subdivisions are a matter of statewide concern;

(b) There is a growing concern statewide with special districts and municipal and county improvement districts that are either insolvent or threatened with insolvency and the attendant impairment of viability and of the ability to provide public services; and

(c) The credit reputation of political subdivisions of the state of Colorado is of vital interest to citizens of the state.

(2) The general assembly determines that it is necessary to empower the securities commissioner to regulate and monitor the issuance of municipal bonds of political subdivisions and to develop information and recommendations for appropriate action for the general assembly in connection therewith.

(3) The general assembly declares that the annual disclosure of financial and credit information for public securities will benefit both issuers and investors by expanding and stabilizing the market for public securities and thereby improving the marketability of such securities.

(4) Therefore, the general assembly declares that it is in the best interests of this state and its citizens that safeguards and full disclosure be made in connection with the issuance of bonds of special districts and municipal and county improvement districts and that this article is necessary to protect the continued provision of public services and the credit of political subdivisions. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

**Source: L. 91:** Entire article added, p. 2404, § 1, effective January 1, 1992.

**11-59-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Appraisal" shall have the same meaning as provided in section 12-61-702 (1), C.R.S.

(2) "Bond" means any bond, debenture, or other obligation authorized to be issued by any special district, municipal general improvement district, municipal special improvement district, county local improvement district, or county public improvement district.

(3) "County local improvement district" shall have the same meaning as district provided in section 30-20-602 (2), C.R.S.

(4) "County public improvement district" shall have the same meaning as improvement district provided in section 30-20-503 (3), C.R.S.

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, shares, certificates, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank, is permitted to exercise under the authority of the comptroller of the currency, and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(6) "District" means a special district, a municipal improvement district, a municipal special improvement district, a county local improvement district, or a county public improvement district.

(7) "Division" means the division of securities created by section 11-51-701.

(8) "Financial institution or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an invest-



ment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its last fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

(9) "General obligation bond" means a bond constituting a debt or an indebtedness of a district backed by the full faith and credit and unlimited mill levy of such district.

(10) "Municipal general improvement district" shall have the same meaning as district provided in section 31-25-602 (1), C.R.S.

(11) "Municipal securities rule-making board" means the board established under section 15b of the federal "Securities Exchange Act of 1934".

(12) "Municipal special improvement district" shall have the same meaning as district provided in section 31-25-501 (1.5), C.R.S.

(13) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(14) "Residential real property" shall have the same meaning as provided in section 39-1-102 (14.5), C.R.S.

(15) "Securities commissioner" means the commissioner of securities appointed pursuant to section 11-51-701.

(16) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(17) "Special district" shall have the same meaning as provided in section 32-1-103 (20), C.R.S.

(18) "Taxing district" means a special district which is organized or acting under the provisions of title 32, C.R.S.

**Source:** L. 91: Entire article added, p. 2405, § 1, effective January 1, 1992.

**Cross references:** For the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.; for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Small Business Investment Act of 1958", see Pub.L. 85-699, codified at 15 U.S.C. sec. 661 et seq.

**11-59-104. General powers of securities commissioner.** (1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division with such books, records, files, and printing and other supplies and such officers and clerical and other assistance as may be necessary in the commissioner's discretion to perform the duties required of the securities commissioner under this article, subject to appropriations made by the general assembly.

(2) The securities commissioner shall make such rules, forms, and orders as are necessary to assure that bonds issued by a district shall meet certain prescribed investment criteria and shall not unduly burden future property owners in such district. To further effectuate the purposes of this article, the securities commissioner may, from time to time, make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this article, including rules and forms governing applications for registration and reports and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purposes of rules and forms, the securities commissioner may classify bonds, issuers, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(3) No rule, form, or order shall be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors or present or future property owners and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating this article and to achieving uniformity in the form and content of applications and reports wherever practicable.

(4) (a) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of financial statements of persons other than districts required under this article, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by certified public accountants. Unless the commissioner by rule or order provides otherwise, a financial statement required of such persons under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles or in such other form as may be prescribed for the issuer of the financial statement of such person by law.

(b) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of supplemental financial information of districts required under this article. Any supplemental financial information required under this article must be prepared in accordance with generally accepted accounting principles or such other accounting principles or in such other form as are prescribed for the supplemental financial information of such district by law.

(5) The securities commissioner may, by rule or order, establish standards and procedures for full disclosure to property owners in, and potential bond investors of, a district of such district's current financial condition.

(6) (a) The securities commissioner shall, by rule or order, require a special district to file with the securities commissioner a copy of the annual budget which such special district is required to file with the department of local affairs. Such budget shall not authorize the use of bond reserve funds or the proceeds of a sale or proposed sale of public facilities or improvements built or paid for with bond proceeds for bond payments without the prior written authorization of the securities commissioner.

(b) The securities commissioner shall, by rule or order, require districts to file with the securities commissioner a copy of the annual audit required pursuant to section 29-1-603, C.R.S., at the same time as districts are required to file audits of such districts with the state auditor.

(c) Where the application for registration of a special district is effective pursuant to section 11-59-108, the securities commissioner may, by rule or order, require such a special district to file with the audited statement a further disclosure statement setting forth credit and financial information which will assist existing and potential investors in evaluating the district's ability to meet its debt service requirements, the enforcement of bondholders' rights and remedies, and the attainment of growth projections set forth in any documents accompanying the registration application.

(d) Any statements required to be filed pursuant to paragraph (a), (b), or (c) of this subsection (6) shall be made available to any person for inspection and copies thereof supplied as ordered by any person at a fee to be determined by the securities commissioner.

(7) The securities commissioner shall, by rule or order, require that a district obtain prior written approval of the securities commissioner before making any use of the proceeds of a bond offering in a manner that is contrary in any material respect to the use of proceeds that was described in the application for registration and declared effective by the securities commissioner.

(8) The securities commissioner shall, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(9) The securities commissioner may compile information and reports and may make recommendations to the general assembly and the governor for such action, including



legislation, as may be deemed desirable to promote the financial integrity of all investments in obligations of instrumentalities of the state. For such purposes, the securities commissioner may require from instrumentalities of the state such reports and information as may be necessary to determine the financial stability of such instrumentalities and the financial character of their obligations.

(10) All the powers of the securities commissioner described in this section relating to a district issuing bonds shall apply to any other taxing district signatory to a contract which pledges the revenues of such contract to the payment of the obligations of the issuing district.

**Source: L. 91:** Entire article added, p. 2407, § 1, effective January 1, 1992; except that subsection (1) is effective July 1, 1991. (See § 11-59-120.)

**11-59-105. Colorado municipal bond supervision advisory board - creation.**

(1) (a) There is hereby created the Colorado municipal bond supervision advisory board, to be composed of three members of the general assembly, one municipal securities broker-dealer representative, one representative of a county, one representative of a municipality, one representative of a special district, one representative of banks that act as indenture trustees for municipal bond offerings, one bond counsel representative, one real estate developer representative, three members of the general public with experience in municipal financing as investors who are not associated with any of the other members or interests, and four owners of residential real property located in special districts who are not associated with any of the other members or interests. Except for the legislative members, members of the board shall be appointed by the governor, who shall take into account the extent to which the board represents the geographic areas, population concentrations, and ethnic communities of this state. Appointments by the governor shall be for a period of four years. The three members of the general assembly shall be appointed one each by the governor, the speaker of the house of representatives, and the president of the senate. No more than two of said legislative members may be from the same major political party, and, except as provided in paragraph (b) of this subsection (1), each such legislative member shall be appointed for a term of two years or for the same term to which they were elected, whichever is less. Successors shall be appointed in the same manner as the original members. Vacancies of all other members shall be filled by appointment by the governor for unexpired terms. In the case of a vacancy, the remaining members of the board shall exercise all the powers and authority of the board until such vacancy is filled. The board shall choose its own chairperson by majority vote of the quorum present at a meeting called for the purpose of electing a chairperson. The board shall meet not less than annually. Members of the board shall receive no compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties. Such expenses shall be paid from the appropriations from the division of securities cash fund created in section 11-51-707. A majority of the board shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall each appoint or reappoint one member in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(2) The board shall aid and advise the securities commissioner in connection with the commissioner's duties under this article including, but not limited to, development of

policies, rules, orders, standards, guidelines, criteria and procedures regarding the registration of bond issues, ordinances, and resolutions and applications for authorization to file federal bankruptcy petitions and assuring impartiality and freedom from political influence in such activities.

(3) Repealed.

**Source: L. 91:** Entire article added, p. 2410, § 1, effective January 1, 1992; except that this section is effective July 1, 1991. (See § 11-59-120.) **L. 97:** (3) repealed, p. 102, § 2, effective March 24. **L. 2004:** (1) amended, p. 520, § 8, effective July 1. **L. 2007:** (1) amended, p. 176, § 5, effective March 22.

**11-59-106. Requirement for registration of district bonds.** It is unlawful for any district to issue bonds or for any other person to make a distribution of such bonds unless they are first registered with the securities commissioner under section 11-59-108 or unless the issuance of bonds is exempted under section 11-59-110.

**Source: L. 91:** Entire article added, p. 2411, § 1, effective January 1, 1992. **L. 94:** Entire section amended, p. 1847, § 14, effective July 1.

**11-59-107. General registration provisions.** (1) An application for registration of bonds may be filed by the district proposing to issue the bonds or a broker-dealer licensed or exempt under article 51 of this title acting on behalf of such district.

(2) Every application for registration shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-59-119.

(3) Any document or portion thereof filed with the securities commissioner under this article within five years preceding the filing of an application for registration may be incorporated by reference in an application to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any application.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-59-108 that a district require that persons building or developing improvements in the district furnish security to the district for their undertakings relating to payments supporting the offering. The commissioner may, by rule or order, determine the manner and form of such security, which may include but need not be limited to:

(a) Letters of credit or guarantees from depository institutions or such other persons, companies, or institutions approved by the securities commissioner;

(b) Escrow deposits of cash or securities; or

(c) First lien mortgages on land owned by developers or builders, together with recent appraisals.

(6) An application for registration may be amended after its effective date so as to increase the quantity of bonds being offered. A district filing such an amendment shall pay a fee, which shall be determined and collected pursuant to section 11-59-119, with respect to the additional bonds being registered.

**Source: L. 91:** Entire article added, p. 2411, § 1, effective January 1, 1992.

**11-59-108. Registration of bonds.** (1) An issuance of bonds may be registered by a district under this article.

(2) An application for registration of bonds under this section shall contain full and fair disclosure of all material facts respecting the bonds offered, including the following information, shall state the title of the bonds and the number and amount being registered under this article, and shall be accompanied by the following documents:

(a) The most recent district audit report;



(b) Engineering and architectural reports which describe the cost and location of improvements in the district;

(c) Copies of intergovernmental agreements, construction contracts, and competitive bids which disclose the material elements of any proposed project to be financed by the proceeds of the offering, if available;

(d) Copies of signed agreements, if available, with persons building or developing improvements in the district which are to be owned, managed, leased, or sold by such persons;

(e) Copies of agreements, if any, with the owners of major parcels of vacant or undeveloped land in the district which disclose development fees or other payments to be made to support the proposed bonds while the district is being developed in accordance with the service plan;

(f) Recently audited financial statements of persons building or developing improvements in the district for contracts in excess of fifty thousand dollars;

(g) In a special district, copies of the service plan and any amendments thereto and copies of all reports required by law to be filed with the county or counties wherein the special district is located and, where appropriate, evidence of compliance with any other requirement of law imposed on special districts issuing bonds; and

(h) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the bonds offered.

(3) A registration application under this section becomes effective when the securities commissioner so orders, if the application is not subject to a stop order under section 11-59-109. In the case of an order of effectiveness, the securities commissioner shall include in such order a list of the documents reviewed in connection with the application for registration.

(4) The date of filing shall be the date that the application for registration or an amendment to the application is received by the securities commissioner.

(5) Districts are subject to the open meetings law under part 4 of article 6 of title 24, C.R.S., and the open records law under article 72 of title 24, C.R.S.

**Source:** L. 91: Entire article added, p. 2412, § 1, effective January 1, 1992. L. 95: (5) amended, p. 1093, § 5, effective May 31.

**11-59-109. Denial, suspension, or revocation of registration.** (1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any application for registration, if the securities commissioner finds that the order is in the public interest and any one of the following grounds exists:

(a) The application for registration as of its effective date, or as of any earlier date in the case of an order denying effectiveness, or any amendment to such application as of its effective date contains any false or misleading statement in violation of section 11-59-112;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated in connection with this offering by the district, or its agents, servants, or employees, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlled by the district, or any underwriter;

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; or

(d) The terms of the offering are substantially inconsistent with the standards, guidelines, and criteria the securities commissioner promulgates by rule to effectuate the purposes of this article, including, but not limited to:

(I) Guidelines for amounts of capitalized interest in connection with the total bond proceeds of the district. In no case shall the use of capitalized interest for bond payments for more than three years be permitted.

(II) Appraisal requirements for land in the district;

(III) Procedures for the appointment of a trustee, if necessary, to represent the bondholders of a district;

(IV) Guidelines and criteria for indentures of trust and the contents thereof included in bonds of a district;

(V) Procedures for the review of general obligation bonds for parity with other existing bonds of a district;

(VI) Standards for disclosure to bondholders in the official statement on the bonds of a district;

(VII) Guidelines and criteria for appropriate bidding, competitive arrangements, and contracts, in connection with the issuance of bonds of a district;

(VIII) Standards for the review of bidding, competitive arrangements, and contracts for conflict of interest;

(IX) Standards for underwriter fees in connection with the issuance of the bonds; and

(X) Requirements that adequate, prompt, and effective remedies be available to bondholders in the bond resolution in the event of default in the payment of bonds issued pursuant to an application for registration declared effective by the securities commissioner or in the event of failure of the district to abide by its covenants as contained in the bond resolution or ordinance or to abide by the rules promulgated by the securities commissioner under this article or any applicable law.

(2) The securities commissioner may, by emergency order, summarily postpone or suspend the effectiveness of an application for registration pending final determination of any proceeding under this section.

(3) No stop order shall be entered under this section, except under subsection (2) of this section, without the provision to the district of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**Source: L. 91:** Entire article added, p. 2413, § 1, effective January 1, 1992.

**11-59-110. Exemptions from registration.** (1) Subject to the requirements of subsection (2) of this section, the following issues of bonds by a district are exempted from all of the provisions of sections 11-59-104 and 11-59-106:

(a) Bonds issued on or before December 31, 1991;

(b) Any issue of general obligation bonds where the total obligation represented by the issue together with any other general obligation of the district does not at the time of issuance exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the district as certified by the assessor;

(c) Any issue of bonds that is rated in one of its four highest rating categories by one or more nationally recognized organizations which regularly rate such obligations;

(d) Any issue of bonds by a district in which infrastructure is in place which has been determined by the board of such district to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency to bring such district into compliance with applicable federal or state laws or regulations for the protection of the public health or the environment if the proceeds raised as a result of such issue are limited solely to the direct and indirect costs of the construction or improvements mandated and are used solely for those purposes;

(e) Any issue of bonds secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution:

(I) With a net worth of not less than ten million dollars in excess of the obligation created by the issuance of the letter of credit, line of credit, or other credit enhancement;

(II) With the minimum regulatory capital as defined by the primary regulator of such depository institution to meet such obligation; and

(III) Where the obligation does not exceed ten percent of the total capital and surplus of the depository institution, as those terms are defined by the primary regulator of such depository institution;



(f) Any issue of bonds insured as to the payment of the principal and interest on the debt by a policy of insurance issued by an insurance company authorized to do business as an insurance company in this state and authorized for such risk by the insurance commissioner appointed pursuant to section 10-1-104, C.R.S.;

(g) Any issue of bonds not involving a public offering made exclusively to accredited investors, as that term is defined under sections 3(b) and (4)(2) of the federal "Securities Act of 1933" by regulation adopted thereunder by the securities and exchange commission;

(h) Any issue of bonds made pursuant to an order of a court of competent jurisdiction;

(i) Any issue of bonds by a district which has principal amounts payable from moneys other than the proceeds of an ad valorem tax, where the total of such obligations represented by the issue, together with other such bonds of the district, does not at the time of the issuance exceed two million dollars;

(j) Any issue of bonds of the district issued to the Colorado water resources and power development authority which evidences a loan from said authority to the district; and

(k) Any issue of bonds by a district that contains territory subject to an intergovernmental annexation agreement between the city and county of Denver and Adams county dated April 21, 1988, made pursuant to section 30-6-109.5, C.R.S.

(1.5) (a) The securities commissioner may make such rules, forms, and orders as are necessary to implement the provisions of subsection (1) of this section and to define any terms contained therein insofar as the definitions are not inconsistent with the provisions of this article.

(b) No such rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or the protection of investors and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating subsection (1) of this section and to achieving uniformity wherever practicable.

(c) The securities commissioner may, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(2) As conditions to the applicability of the exemptions provided in subsection (1) of this section, the district issuing the bonds must file or cause to be filed with the securities commissioner at least five days prior to the first sale of such bonds:

(a) A notice of claim of exemption in the form and containing the information prescribed by the securities commissioner;

(b) A copy of the official statement to be distributed in connection with such offering; and

(c) An exemption fee, which shall be determined and collected pursuant to section 11-59-119.

(2.5) For purposes of the application of this section, exemption from registration under subsection (1) of this section shall not be contingent upon review or approval of any information filed with the securities commissioner under subsection (2) of this section.

(3) The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, exempt specified bonds or types of bonds or transactions therein from section 11-59-106 if the securities commissioner finds that the application of section 11-59-106 to such bonds or transactions is not necessary in the public interest and for the protection of investors.

**Source:** L. 91: Entire article added, p. 2415, § 1, effective January 1, 1992. L. 94: IP(1) and (1)(i) amended and (1.5) and (2.5) added, p. 1848, § 15, effective July 1.

**Cross references:** For the federal "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.

**11-59-111. Unlawful representation concerning registration or exemption.**

(1) Neither the fact that an application for registration has been filed nor the fact that an application for registration has become effective constitutes a finding by the securities commissioner that any document filed under this article is true, is complete, and is not misleading. No such fact, nor the fact that an exemption or exception is available for a security or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any security or transaction. In the case of an issue of bonds made pursuant to an order of registration effective under section 11-59-108, nothing in this subsection (1) shall prohibit the inclusion in the official statement used in connection with the offer or sale of such bonds a representation that the issue of bonds has been registered with the securities commissioner and a statement identifying the documents reviewed by the securities commissioner in the course of the registration process.

(2) It is unlawful to make, or cause to be made, to any prospective or existing investor or property owner any representation inconsistent with subsection (1) of this section.

**Source: L. 91:** Entire article added, p. 2417, § 1, effective January 1, 1992.

**11-59-112. Misleading filing.** It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

**Source: L. 91:** Entire article added, p. 2418, § 1, effective January 1, 1992.

**11-59-113. Investigations - subpoenas.** (1) The securities commissioner may make such public and private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, seek compulsion of their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the securities commissioner or any officer designated by the commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled from an individual, after that individual claims the privilege against self-incrimination, under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other infor-



mation, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any officers or employees of the division except among themselves or when necessary or appropriate in connection with an investigation or a proceeding under this article or for any law enforcement purpose.

(6) It is unlawful for the securities commissioner or any officers or employees of the division to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public.

**Source: L. 91:** Entire article added, p. 2418, § 1, effective January 1, 1992.

**11-59-114. Enforcement by injunction.** (1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court for the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section a claim for restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action.

**Source: L. 91:** Entire article added, p. 2419, § 1, effective January 1, 1992.

**11-59-115. Criminal and civil penalties and damages.** (1) Any person who willfully violates the provisions of section 11-59-112 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, other than section 11-59-112, or any rule or order under this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and any second violation of this section shall be punishable by a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars.

(3) Conviction of violation of any provision of this article under this section shall also establish a prima facie case for liability for civil damages by any person injured thereby.

(4) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor to the attorney general or the appropriate district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the United States attorney.

(5) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(6) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

**Source: L. 91:** Entire article added, p. 2419, § 1, effective January 1, 1992. **L. 2002:** (1) and (2) amended, p. 1472, § 45, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

**11-59-116. Administrative proceedings.** Any administrative proceeding under this article shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. The securities commissioner may refer the conduct of any administrative proceeding to an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

**Source: L. 91:** Entire article added, p. 2420, § 1, effective January 1, 1992.

**11-59-117. Judicial review of orders.** (1) Any person claiming to be aggrieved by a final order of the securities commissioner, including a refusal to issue an order, may obtain judicial review thereof, and the securities commissioner may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the securities commissioner and upon all parties who appeared before the securities commissioner, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the securities commissioner in whole or in part.

(4) An objection that has not been urged before the securities commissioner shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) The findings of the securities commissioner as to the facts shall be conclusive if supported by substantial evidence.

(6) The jurisdiction of the court shall be exclusive, and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(7) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

**Source: L. 91:** Entire article added, p. 2420, § 1, effective January 1, 1992.

**11-59-118. Interpretation and interpretive opinions.** (1) The provisions and rules of this article shall be coordinated with the provisions and rules of article 51 of this title to the extent that such coordination is consistent with both the purposes and provisions of this article.

(2) The securities commissioner may, in such commissioner's discretion, honor requests from interested persons for interpretive opinions regarding any provision of this article or any rule or order under this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-59-119 and which shall not be refundable. In response to any request for an interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

**Source: L. 91:** Entire article added, p. 2421, § 1, effective January 1, 1992.

**11-59-119. Collection of fees - division of securities cash fund.** (1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.



(2) The securities commissioner shall transmit all fees collected under this article to the state treasurer, who shall credit the same to the division of securities cash fund created by section 11-51-707. Moneys credited to the division of securities cash fund shall be used as provided in this section and in section 11-51-707 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) The securities commissioner shall set the amount of each fee which the securities commissioner is authorized by law to collect under this article. In the discretion of the commissioner, the securities commissioner may set application for registration or amendment fees payable under section 11-59-104 by establishing a basic filing fee up to a maximum of five hundred dollars, plus a scale of rates applied to the dollar amount of bonds to be registered, not to exceed five dollars per ten thousand dollars, up to a maximum of ten thousand dollars based on the dollar amount of bonds to be issued. The securities commissioner may set the exemption fee payable under section 11-59-110 up to a maximum of one hundred dollars. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

**Source: L. 91:** Entire article added, p. 2422, § 1, effective January 1, 1992.

**11-59-120. Effective date.** The rule-making authority of the securities commissioner and the provisions of section 11-59-104 (1) and section 11-59-105 shall take effect July 1, 1991, and, unless otherwise provided, all other provisions of this article shall take effect January 1, 1992.

**Source: L. 91:** Entire article added, p. 2422, § 1, effective January 1, 1992.

**ARTICLE 59.3**

**Interest Rate Exchange Agreements**

11-59.3-101.	Legislative declaration.		ments.
11-59.3-102.	Definitions.	11-59.3-104.	Construction of article.
11-59.3-103.	Interest rate exchange agree-	11-59.3-105.	Liberal construction.

**11-59.3-101. Legislative declaration.** The general assembly finds and declares that interest rate exchange agreements can be used to reduce net borrowing costs, to achieve desirable net effective interest rates in connection with the issuance and sale of public securities, and to provide an efficient means of debt management.

**Source: L. 92:** Entire article added, p. 949, § 1, effective April 29.

**11-59.3-102. Definitions.** As used in this article, unless the context otherwise requires:

- (1) "Proposed public securities" means public securities for which a public entity has:
  - (a) Entered into a binding sale contract subject to customary conditions; or
  - (b) Received voter approval pursuant to section 20 of article X of the state constitution.

(2) "Public entity" means any of the following entities: The state of Colorado; any institution, agency, instrumentality, authority, county, city, town, city and county, district, or other political subdivision of the state, including any school district and institution of higher education; any institution, department, agency, instrumentality, or authority of any entity listed in this subsection (2); and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the entities listed in this subsection (2).

(3) "Public securities" means bonds, notes, debentures, interim certificates, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or certificates of participation therein, issued by or on behalf of a public entity.

**Source: L. 92:** Entire article added, p. 949, § 1, effective April 29. **L. 2004:** (3) amended, p. 950, § 6, effective May 21. **L. 2005:** (1) amended, p. 880, § 1, effective June 1.

**11-59.3-103. Interest rate exchange agreements.** (1) A public entity may enter into an agreement for an exchange of interest rates, cash flows, or payments as provided in this section if it finds that such an agreement would be in the best interests of the public entity. In entering into any agreement under this section, the public entity shall give consideration to the savings and debt management benefits to the citizens of the public entity. Such agreement shall contain such payment, security, default, remedy, and other terms and conditions as the public entity may deem appropriate, including provisions permitting the public entity to pay the party with whom the public entity enters the agreement for any loss of benefits under such agreement upon early termination thereof or default thereunder.

(2) A public entity may enter into an agreement to exchange interest rates, cash flows, or payments only if:

(a) The long-term debt obligations of the party with whom the public entity enters the agreement are rated in one of its two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations; or

(b) The obligations under the agreement of the party with whom the public entity enters the agreement are either:

(I) Guaranteed by a party whose long-term debt obligations are rated in one of its two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations; or

(II) Collateralized by obligations deposited with the public entity or an agent of the public entity which would be legal investments for the public entity pursuant to section 24-75-601.1, C.R.S., and which maintain a market value of not less than one hundred percent of the principal amount upon which the exchange of interest rates is based.

(3) A public entity may agree, with respect to public securities that the public entity has issued or proposed public securities bearing interest at a variable rate, to pay sums calculated at a fixed rate or rates or at a different variable rate or rates determined pursuant to a formula or formulas set forth in the agreement on an amount not to exceed the principal amount of the public securities or proposed public securities with respect to which the agreement is made, in exchange for the payment to the public entity of sums calculated at a variable rate or rates determined pursuant to a formula or formulas set forth in the agreement on the same principal amount.

(4) A public entity may agree, with respect to public securities that the public entity has issued or proposed public securities bearing interest at a fixed rate or rates, to pay sums calculated at a variable rate or rates or in fixed amounts determined pursuant to a formula or formulas or a schedule or schedules set forth in the agreement on an amount not to exceed the principal amount of the public securities or proposed public securities with respect to which the agreement is made, in exchange for an agreement for the payment to the public entity of sums calculated at a fixed rate or rates set forth in the agreement on the same principal amount.

(5) The term of an agreement entered into pursuant to this section shall not exceed the term of the public securities or proposed public securities with respect to which the agreement is made.

(6) An agreement entered into pursuant to this section is not a debt or indebtedness of the public entity for the purposes of any limitation upon the debt or indebtedness of the public entity or any requirement for an election with regard to the issuance of public securities that is applicable to the public entity.

(7) A public entity which has entered into an agreement pursuant to this section with respect to public securities or proposed public securities may treat the amount or rate of interest on the public securities or proposed public securities as the amount or rate of interest payable after giving effect to the agreement for the purpose of calculating:

(a) Rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay public securities;



(b) Statutory requirements concerning revenue coverage that are applicable to public securities;

(c) Tax levies to pay debt service on public securities; and

(d) Any other amounts which are based upon the rate of interest of public securities.

(8) Subject to covenants applicable to the public securities, any payments required to be made by the public entity under the agreement may be made from and secured by amounts pledged to pay debt service on the public securities or proposed public securities with respect to which the agreement is made or from any other legally available source.

(9) Prior to entering into an interest rate exchange agreement, the governing board of the public entity shall receive information as to the costs, risks, and benefits of the agreement from the staff of the public entity.

(10) Any state agency, as defined in section 24-36-121 (3) (c), C.R.S., shall notify the state treasurer when it enters into an agreement for an exchange of interest rates, cash flows, or payments as provided in this section.

**Source: L. 92:** Entire article added, p. 950, § 1, effective April 29. **L. 2012:** (10) added, (SB 12-150), ch. 196, p. 786, § 2, effective May 24.

**11-59.3-104. Construction of article.** The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not directly or indirectly modify, limit, or affect the powers conferred by any other law. Nothing in this article shall be construed to limit the powers of home rule municipalities organized under the provisions of article XX of the state constitution.

**Source: L. 92:** Entire article added, p. 952, § 1, effective April 29.

**11-59.3-105. Liberal construction.** This article shall be liberally construed so that the legislative intent may be fulfilled.

**Source: L. 92:** Entire article added, p. 952, § 1, effective April 29.

## ARTICLE 59.5

### No Federal Preemption Under “Secondary Mortgage Market Enhancement Act of 1984”

11-59.5-101. Investments in mortgage-related securities - no federal preemption.

**11-59.5-101. Investments in mortgage-related securities - no federal preemption.** No person, trust, corporation, partnership, association, business trust, or business entity or class thereof may purchase, hold, or invest in securities to which the provisions of paragraph (a) or (b) of section 106 of the federal “Secondary Mortgage Market Enhancement Act of 1984”, Pub.L. 98-440, would otherwise be applicable except in accordance with any provision of Colorado law including, without limitation, the provisions of this title and of title 10, C.R.S.

**Source: L. 91, 2nd Ex. Sess.:** Entire article added, p. 54, § 1, effective October 1.

**Editor’s note:** This article was numbered as article 59 by House Bill 91S2-1004, enacted at the Second Extraordinary Session of the Fifty-eighth General Assembly in 1991, but has been renumbered on revision for ease of location.

**Cross references:** For the “Secondary Mortgage Market Enhancement Act of 1984”, see Pub.L. 98-440, 98 Stat. 1689 (1984).

**RECOVERY AND REINVESTMENT FINANCE ACT****ARTICLE 59.7****Colorado Recovery and Reinvestment  
Finance Act of 2009**

11-59.7-101.	Short title.	11-59.7-108.	Recovery zone economic development bond volume cap
11-59.7-102.	Legislative declaration.		- recovery zone facility bond volume cap.
11-59.7-103.	Definitions.	11-59.7-109.	Qualified zone academy bond volume cap.
11-59.7-104.	Stimulus obligations authorized under state law - ancillary agreements.	11-59.7-110.	Recovery and reinvestment act finance authorities.
11-59.7-105.	Federal tax credits - federal direct payments.	11-59.7-111.	Reporting requirements.
11-59.7-106.	Qualified school construction bond volume cap.	11-59.7-112.	No limitation on powers.
11-59.7-107.	Qualified energy conservation bond volume cap.	11-59.7-113.	Executive orders authorized.
		11-59.7-113.5.	Specified tax credit bonds.
		11-59.7-114.	Applicability.

**11-59.7-101. Short title.** This article shall be known and may be cited as the “Colorado Recovery and Reinvestment Finance Act of 2009”.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2190, § 1, effective June 2.

**11-59.7-102. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) The federal “American Recovery and Reinvestment Act of 2009”, Pub.L. 111-5, was enacted by the United States congress in response to a national economic crisis in order to stimulate spending, increase employment, and reduce unemployment in the United States as rapidly as possible, including spending and employment by states and local governments and those who provide goods and services to states and local governments;

(b) The purpose of this article is to stimulate spending, increase employment, and reduce unemployment in Colorado as rapidly as possible by authorizing Colorado public entities to take full advantage of financing opportunities available under the federal recovery and reinvestment act; and

(c) This article shall be interpreted in a manner that stimulates the maximum amount of spending, increases the maximum amount of employment, and reduces the maximum amount of unemployment in Colorado as rapidly as possible through the actions of Colorado public entities in taking full advantage of financing opportunities under the federal recovery and reinvestment act.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2190, § 1, effective June 2.

**11-59.7-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) “Ancillary agreement” means any contract, agreement, or other arrangement that a public entity determines is necessary or convenient in connection with a stimulus obligation, including but not limited to any agreement, contract, or other arrangement:

(a) Pursuant to which the proceeds of such stimulus obligation are loaned or made available to or secured for another public entity, a nonprofit or for-profit corporation, a charter school, or any other person in accordance with the federal recovery and reinvestment act;

(b) Relating to property that is leased or subleased pursuant to a lease-purchase agreement or on which the proceeds of a lease-purchase financing are spent;



(c) For credit or liquidity enhancement of, credit or liquidity support for, or interest rate protection with respect to the stimulus obligation;

(d) That is an interest rate exchange agreement under article 59.3 of this title;

(e) That relates to the investment of proceeds of the stimulus obligation;

(f) For the purchase, sale, marketing, or remarketing of the stimulus obligation; or

(g) For services in connection with the stimulus obligation.

(2) "Ballot issue" has the same meaning as set forth in section 1-1-104 (2.3), C.R.S.

(3) "Ballot question" has the same meaning as set forth in section 1-1-104 (2.7), C.R.S.

(4) "Bond" means any bond, note, interim certificate, contract, evidence of indebtedness, loan, financing agreement, installment purchase or sale agreement, lease, or lease-purchase agreement on which payments by a public entity are not subject to annual appropriation by its governing body or any debt or multiple-fiscal year financial obligation issued or entered into by a public entity.

(5) "Build America bond" has the same meaning as set forth in section 54AA of the internal revenue code.

(6) "Charter school" means a charter school as defined in section 22-30.5-103 (2), C.R.S., an independent charter school as defined in section 22-30.5-302 (6), C.R.S., or an institute charter school as defined in section 22-30.5-502 (6), C.R.S.

(7) "Charter school bond issuer" means any public entity that is authorized under state law to finance or refinance a project for the benefit of a charter school through the issuance of bonds or the execution of a loan agreement, financing agreement, or lease-purchase agreement with a charter school.

(8) "Clean renewable energy bond" has the same meaning as set forth in section 54 of the internal revenue code.

(8.5) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101 (1), C.R.S.

(9) "Commission on higher education" means the Colorado commission on higher education created and existing pursuant to article 1 of title 23, C.R.S.

(10) "Federal direct payments" means amounts that the federal government is to pay to or on behalf of a public entity that issues or enters into a stimulus obligation and elects to receive direct payments from the federal government with respect to the stimulus obligation pursuant to the internal revenue code.

(11) "Federal recovery and reinvestment act" means the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, and any amendments to the act or to any provision of the internal revenue code included in or amended by the act.

(12) "Governing body" means a city council, board of trustees, commission, board of county commissioners, board of directors, governing board of a public institution of higher education, or other legislative body of a public entity in which the legislative powers of the public entity are vested. The governing body of the state treasurer, or of the state treasurer, acting on behalf of the state, is the state treasurer.

(13) Repealed.

(14) "Internal revenue code" has the same meaning as set forth in section 39-23.5-102 (9.5), C.R.S.

(15) "Large local government" has the same meaning as set forth in section 54D of the internal revenue code.

(16) "Large municipality" has the same meaning as set forth in section 1400U-1 of the internal revenue code.

(17) "Lease-purchase agreement" means any agreement between a public entity and any other person:

(a) That is a lease or lease-purchase agreement under the laws of this state;

(b) Pursuant to which the public entity has agreed to make payments in future fiscal years subject to annual appropriation of the payments by the governing body of the public entity; and

(c) That is treated as an installment sale agreement for federal income tax purposes.

(18) "New clean renewable energy bond" has the same meaning as set forth in section 54C of the internal revenue code.

(19) "Project" means any property, goods, or services on which the proceeds of a bond or lease-purchase financing are or may be spent, including but not limited to any job training or educational program on which the proceeds of recovery zone economic development bonds may be spent under federal law.

(20) "Public entity" means the state, any agency, department, or political subdivision of the state, any quasi-governmental entity, or any other entity created by or pursuant to the constitution or laws of the state that is authorized under state law to issue bonds or enter into a lease-purchase agreement, including but not limited to:

- (a) The state treasurer or the state treasurer, acting on behalf of the state;
- (b) A state agency or department;
- (c) A state authority;
- (d) A public institution of higher education, state educational institution, or other state institution, including its governing body or any other issuing authority of the institution constituting a body corporate;
- (e) A county or city and county;
- (f) A municipality;
- (g) A school district;
- (h) A special district organized or acting pursuant to the provisions of title 32, C.R.S.;
- (i) A district or authority organized or acting pursuant to the provisions of title 29, 30, or 31, C.R.S.;
- (j) A water conservancy district created pursuant to article 45 of title 37, C.R.S.;
- (k) Any other political subdivision or governmental or quasi-governmental entity of the state;
- (l) Any other public entity as defined in section 24-75-601 (1), C.R.S.;
- (m) A recovery and reinvestment act finance authority;
- (n) An enterprise of any public entity listed in paragraphs (a) to (m) of this subsection (20); and

(o) A nonprofit corporation organized under the laws of the state that is authorized by law, or a trust created under the laws of the state that is authorized under its governing documents, to issue bonds or enter into lease-purchase agreements on behalf of one or more public entities listed in paragraphs (a) to (n) of this subsection (20).

(21) "Public institution of higher education" means any state-supported institution of higher education that is obligated to conform to the policies set by the commission on higher education pursuant to section 23-1-102 (2), C.R.S.

(22) "Public school capital construction assistance board" means the board created in section 22-43.7-106 (1) (a), C.R.S.

(23) "Qualified energy conservation bond" has the same meaning as set forth in section 54D of the internal revenue code.

(24) "Qualified energy conservation bond volume cap" means the dollar amount of qualified energy conservation bonds allocated to the state and the state's large local governments pursuant to section 54D of the internal revenue code.

(25) "Qualified school construction bond" has the same meaning as set forth in section 54F of the internal revenue code.

(26) "Qualified school construction bond volume cap" means the school district qualified school construction bond volume cap and the state qualified school construction bond volume cap and includes any portion of the school district qualified school construction bond volume cap that is reallocated to the public school capital construction assistance board pursuant to section 11-59.7-106.

(27) "Qualified zone academy bond" has the same meaning as set forth in section 54E of the internal revenue code.

(28) "Qualified zone academy bond volume cap" means the volume cap for qualified zone academy bonds allocated by the federal government to the state pursuant to section 54E of the internal revenue code.

(29) "Recovery and reinvestment act finance authority" means a separate legal entity created by contract between or among public entities for the purpose of issuing stimulus obligations pursuant to section 11-59.7-110.

(30) "Recovery zone" means:



(a) Any area designated by the public entity that issues or enters into a recovery zone bond as having significant poverty, unemployment, rate of home foreclosures, or general distress;

(b) Any area designated by the public entity that issues or enters into a recovery zone bond as economically distressed by reason of the closure or realignment of a military installation pursuant to the federal "Defense Base Closure and Realignment Act of 1990", Pub.L. 101-510; and

(c) Any area for which a designation as an empowerment zone or renewal community is in effect.

(31) "Recovery zone bond" means both a recovery zone economic development bond and a recovery zone facility bond.

(32) "Recovery zone economic development bond" has the same meaning as set forth in section 1400U-2 of the internal revenue code.

(33) "Recovery zone economic development bond project" means any property, goods, or services on which the proceeds of recovery zone economic development bonds may be spent under federal law.

(34) "Recovery zone economic development bond volume cap" means the dollar amount of recovery zone economic development bonds to be allocated by the federal government to the state and by the state to the state's counties and large municipalities pursuant to section 1400U-1 of the internal revenue code.

(35) "Recovery zone facility bond" has the same meaning as set forth in section 1400U-3 of the internal revenue code.

(36) "Recovery zone facility bond volume cap" means the dollar amount of recovery zone facility bonds to be allocated by the federal government to the state and by the state to the state's counties and large municipalities pursuant to section 1400U-1 of the internal revenue code.

(37) "School district qualified school construction bond volume cap" means the volume cap for qualified school construction bonds allocated by the federal government to school districts of the state pursuant to section 54F of the internal revenue code.

(37.5) "Specified tax credit bond" has the same meaning as set forth in section 6431 of the internal revenue code.

(38) "State qualified school construction bond volume cap" means the volume cap for qualified school construction bonds allocated by the federal government to the state pursuant to section 54F of the internal revenue code.

(39) "Stimulus obligation" means any bond or lease-purchase agreement that qualifies as a build America bond, clean renewable energy bond, new clean renewable energy bond, qualified energy conservation bond, qualified school construction bond, qualified zone academy bond, or recovery zone bond.

(40) "Stimulus obligation document" means any resolution, ordinance, trust indenture, loan agreement, financing agreement, lease-purchase agreement, lease, agreement, contract, or other instrument under which a stimulus obligation is issued or entered into or pursuant to which a public entity incurs obligations with respect to a stimulus obligation and any ancillary agreement entered into pursuant to section 11-59.7-104 (2).

(41) "Type of" means, when used with respect to any stimulus obligation, any one of a build America bond, clean renewable energy bond, new clean renewable energy bond, qualified energy conservation bond, qualified school construction bond, qualified zone academy bond, or recovery zone bond.

(42) "Volume cap" means the dollar amount of any stimulus obligation allocated to the state or another public entity pursuant to the federal recovery and reinvestment act or any other federal law.

**Source:** L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2191, § 1, effective June 2. L. 2010: (10) and (11) amended and (37.5) added, (SB 10-200), ch. 234, p. 1027, § 1, effective May 18. L. 2012: (8.5) added and (13) repealed, (HB 12-1315), ch. 224, p. 956, § 1, effective July 1.

**11-59.7-104. Stimulus obligations authorized under state law - ancillary agreements.** (1) Public entities may issue or enter into stimulus obligations as authorized by this article. Except as otherwise provided in this section and section 11-59.7-105, each type of stimulus obligation shall be issued or entered into by a public entity in accordance with a law of the state that authorizes or permits the public entity to issue bonds or enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced with proceeds of the type of stimulus obligation under federal law. Notwithstanding any inconsistent provision of any other law of the state:

(a) Any public entity that is authorized or permitted under the laws of the state to issue bonds to finance or refinance a project that under federal law may be financed or refinanced with proceeds of build America bonds may issue the bonds as build America bonds. Any public entity that is authorized or permitted under the laws of the state to enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced under federal law with proceeds of build America bonds may enter into the lease-purchase agreement as a build America bond.

(b) (I) Any public entity that is authorized or permitted under the laws of the state to issue bonds to finance or refinance a project that under federal law may be financed or refinanced with proceeds of a type of stimulus obligation other than a build America bond may issue the type of stimulus obligation:

(A) To finance or refinance any project that may be financed or refinanced under federal law with proceeds of the type of stimulus obligation; and

(B) To issue bonds as the type of stimulus obligation under federal law.

(II) Any public entity that is authorized or permitted under the laws of the state to enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced under federal law with proceeds of a type of stimulus obligation other than a build America bond may:

(A) Enter into a lease-purchase agreement to finance or refinance any project that may be financed or refinanced under federal law with proceeds of the type of stimulus obligation; and

(B) Enter into the lease-purchase agreement as a stimulus obligation under federal law.

(c) To the extent elected by a public entity pursuant to section 11-57-204 (1), part 2 of article 57 of this title shall apply to stimulus obligations issued or entered into by public entities, stimulus obligations shall be securities, and public entities, as defined in section 11-59.7-103 (20), shall also be public entities for purposes of part 2 of article 57 of this title.

(d) A stimulus obligation may be sold at any price, be subject to optional or mandatory redemption or optional or mandatory tender at any time and at any price, and contain any other special provisions that the governing body of the public entity determines are necessary or convenient to issue or enter into the stimulus obligation at a cost and on terms, and with payments scheduled in a manner, that is determined by the governing body to be advantageous to the public entity.

(e) The right to receive any payment of principal of, any interest on, or any other amount with respect to a stimulus obligation, the right to claim any tax credit with respect to a stimulus obligation, and the right to receive any federal direct payment in connection with a stimulus obligation may be stripped or separated from one another, may be issued or delivered to different persons, and may be owned and transferred independently of one another.

(f) Any outstanding stimulus obligation may be refunded by or on behalf of the public entity that issued or entered into it pursuant to article 56 of this title or any other law of the state that authorizes the public entity to issue or enter into refunding obligations.

(g) Section 22-41-110, C.R.S., relating to timely payment of school district obligations, shall apply to a stimulus obligation issued or entered into by a school district that is a general obligation bond issued by a school district pursuant to article 42 or 43 of title 22, C.R.S., an obligation of a school district in connection with a lease agreement or installment purchase agreement entered into by a school district under section 22-32-127 or 22-45-103 (1) (c), C.R.S., or a refunding bond issued by a school district pursuant to article 56 of this title.



(h) Section 23-5-139, C.R.S., relating to the higher education revenue bond intercept program, shall apply to any stimulus obligation:

(I) That is issued or entered into:

(A) By a public institution of higher education;

(B) By a recovery and reinvestment act finance authority created by a contract to which a public institution of higher education is a party; or

(C) By any other public entity to finance or refinance a project that is or is to be owned by or used by a public institution of higher education; and

(II) That meets the other conditions specified in section 23-5-139, C.R.S.

(i) Any stimulus obligation issued or entered into for the purpose of financing or refinancing charter school capital construction by a public entity other than a school district on behalf of a charter school that is entitled to receive funding from the public school fund pursuant to part 1 of article 30.5 of title 22, C.R.S., shall qualify for direct payments under section 22-30.5-406, C.R.S. The charter school debt service reserve fund, as defined in section 22-30.5-408 (1) (a), C.R.S., for any stimulus obligation that is issued by the Colorado educational and cultural facilities authority created in section 23-15-104 (1) (a), C.R.S., that is a qualified charter school bond, as defined in section 22-30.5-408 (1) (d), C.R.S., issued on behalf of a qualified charter school, as defined in section 22-30.5-408 (1) (c), C.R.S., and that meets the other conditions set forth in section 22-30.5-408, C.R.S., shall qualify for replenishment under section 22-30.5-408, C.R.S.

(j) Repealed.

(k) (I) Proceeds of stimulus obligations, moneys held in any sinking fund relating to any stimulus obligation, and other moneys relating to any stimulus obligation may be invested by the state treasurer in any investment or securities permitted by article 36 of title 24, C.R.S., and by the state treasurer or any other public entity in any investment or securities permitted by part 6 of article 75 of title 24, C.R.S., subject to the following modifications:

(A) Any limitations on the maturity of the investment or securities or any securities subject to a repurchase agreement, reverse repurchase agreement, or other investment shall not apply so long as the investment or securities mature on or before the last maturity of the stimulus obligation;

(B) Any limitations on variable rate investments and securities shall not apply; and

(C) Public entities may agree to invest moneys in the investment or securities in advance of the receipt of the moneys.

(II) Public entities also may direct a corporate trustee that holds proceeds of stimulus obligations, moneys held in any sinking fund relating to any stimulus obligation, and other moneys relating to any stimulus obligation to invest or deposit the proceeds or moneys in investments or deposits other than those specified by article 36 of title 24, C.R.S., and part 6 of article 75 of title 24, C.R.S., if the governing body of the public entity determines that the investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits specified by said article 36 or part 6, and the investment will assist the public entity in the financing or refinancing of projects that may be financed or refinanced with the proceeds of its stimulus obligations. Any earnings from any investment or securities permitted by this paragraph (k) may be used and may be pledged to make payments to the owners of stimulus obligations or other persons or may be used for any other lawful purpose for which the public entity may spend money.

(l) The interest on and income from any stimulus obligation shall be exempt from all taxation and assessments in the state. In the stimulus obligation documents, the public entity that issues or enters into a stimulus obligation may make elections under the internal revenue code, including but not limited to an election to designate the stimulus obligation as a qualified tax-exempt obligation for purposes of section 265 of the internal revenue code, an election to treat the stimulus obligation as a specified tax credit bond, or an election to receive federal direct payments with respect to the stimulus obligation, and may waive the exemption of the interest on and income from any stimulus obligation from taxation and assessments in the state.

(m) All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in stimulus obligations.

(n) Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in stimulus obligations if the stimulus obligations satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. This paragraph (n) shall not limit the power of a public entity that issues or enters into a stimulus obligation to enter into an ancillary agreement with another public entity under which the other public entity agrees to make payments to the public entity that issues or enters into the stimulus obligation on any terms agreed to by the two public entities.

(o) A public entity may take any action in connection with any stimulus obligation, and the investment and use of the proceeds, any federal direct payments, or any other moneys received in connection with any stimulus obligation, that the governing body of the public entity determines is necessary or convenient and is not inconsistent with this article.

(2) Any public entity that is authorized to issue or enter into a stimulus obligation pursuant to subsection (1) of this section is also authorized to enter into ancillary agreements with respect to the stimulus obligation and to use and to pledge any amounts received or to be received by the public entity under any such ancillary agreement for the payment of or compliance with the terms of stimulus obligation documents relating to the stimulus obligation.

(3) A public entity that issues or enters into a stimulus obligation may take any action required to comply with, and may covenant in any stimulus obligation document that it will comply with, any provision of federal law applicable to the stimulus obligation, including but not limited to the applicable provisions of the federal recovery and reinvestment act relating to labor standards and reports to the federal government.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2196, § 1, effective June 2. **L. 2010:** (1)(g) and (1)(l) amended, (SB 10-200), ch. 234, p. 1028, § 2, effective May 18; (1)(j) repealed, (HB 10-1422), ch. 419, p. 2066, § 15, effective August 11.

**11-59.7-105. Federal tax credits - federal direct payments.** (1) Any federal tax credit that may be claimed by an owner of a stimulus obligation or any other person in connection with a stimulus obligation shall not be treated as revenue of any public entity and shall not be considered in determining any amount payable by any public entity on or with respect to any stimulus obligation.

(2) A public entity that issues or enters into a stimulus obligation may elect in accordance with federal law to receive a federal direct payment and may use any federal direct payment to make payments to the owners of the stimulus obligation or other persons or for any other lawful purpose for which the public entity may spend money and may deposit any federal direct payment in any fund or account pending such use.

(3) For purposes of section 20 of article X of the state constitution, federal direct payments are federal funds, federal direct payments are not included in fiscal year spending of any public entity, and the receipt of federal direct payments is not a grant from any Colorado state or local government.

(4) A public entity may pledge any federal direct payments expected to be received in connection with bonds that qualify as stimulus obligations to make payments to the owners of the bonds or other persons. Any portion of the debt service on any stimulus obligation may be payable in amounts corresponding to expected federal direct payments, may be payable solely from expected federal direct payments, or may have a priority claim on expected federal direct payments. If, and to the extent that, a public entity pledges federal direct payments expected to be received in connection with bonds to make payments to the owners of the bonds or other persons, the federal direct payments that the public entity expects to receive with respect to the bonds shall be netted against and shall reduce the amount of interest on the bonds and all other amounts payable by the public entity on or with respect to the bonds for purposes of any notice delivered pursuant to section 20 (3) (b) of article X of the state constitution and for purposes of applying any limitation or restriction under the state constitution, any law of the state, any ballot question or ballot



issue, any ancillary agreement, or any ordinance or resolution of the governing body of the public entity relating to the bonds, including but not limited to any limitation on:

- (a) Interest or any other amount payable on or with respect to the bonds;
- (b) The net effective interest rate and net interest cost on the bonds;
- (c) The repayment cost of the bonds; and
- (d) The amount of debt the public entity may incur.

(5) A public entity may identify federal direct payments expected to be received in connection with a lease-purchase agreement that qualifies as a stimulus obligation as the intended source for payment of any portion of the lease payments under the lease-purchase agreement. Any portion of the lease payments payable under any lease-purchase agreement that qualifies as a stimulus obligation may be payable in amounts corresponding to expected federal direct payments, and federal direct payments may be identified as the intended sole source or intended priority source for payment of any portion of the lease payments payable under any lease-purchase agreement that qualifies as a stimulus obligation. If, and to the extent that, a public entity identifies federal direct payments expected to be received in connection with a lease-purchase agreement as an intended source of payment of lease payments, the federal direct payments that the public entity expects to receive with respect to the lease-purchase agreement shall be netted against and shall reduce the amount of lease payments under the lease-purchase agreement representing interest, and all other amounts payable by the public entity under or with respect to the lease-purchase agreement, for purposes of applying any limitation or restriction under the state constitution, any state law, any ballot question or ballot issue, any ancillary agreement, or any ordinance or resolution of the governing body of the public entity relating to the lease-purchase agreement, including but not limited to any limitation on interest or any other amount payable under the lease-purchase agreement and any determination as to the reasonableness of the lease payments under the lease-purchase agreement.

(6) The governing body of a public institution of higher education may designate and treat any federal direct payment as revenues of an auxiliary facility or an institutional enterprise for purposes of sections 23-5-101.5 to 23-5-105.5, C.R.S., and section 23-5-139, C.R.S.

**Source:** L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2200, § 1, effective June 2.

**11-59.7-106. Qualified school construction bond volume cap.** (1) The state qualified school construction bond volume cap shall be allocated to the public school capital construction assistance board, which, subject to the provisions of subsections (3) and (4) of this section, shall use the volume cap to enter into lease-purchase agreements to assist the financing or refinancing of projects pursuant to article 43.7 of title 22, C.R.S.

(2) Any portion of the school district qualified school construction bond volume cap for a calendar year that is allocated to a school district that has not been used on bonds issued or a lease-purchase agreement entered into by the school district or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically by law and without any action by the school district be reallocated by the school district to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year.

(3) If the public school capital construction assistance board determines that it cannot use, or that a school district or a charter school bond issuer can make better use of, any portion of the state qualified school construction bond volume cap for a calendar year or any portion of the school district qualified school construction bond volume cap for a calendar year that is reallocated to the board pursuant to subsection (2) of this section, the board may allocate the portion of the volume cap to the school district or charter school bond issuer for the purpose of financing or refinancing a project approved by the board. Any volume cap

allocated to a school district or charter school bond issuer pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of any calendar year shall, on November 11 of the calendar year, automatically revert to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year. The public school capital construction assistance board may use or reallocate to any school district or charter school bond issuer, for the purpose of financing or refinancing a project approved by the board, any volume cap that reverts to the board pursuant to this subsection (3) or may carry the volume cap forward pursuant to subsection (4) of this section. Any volume cap that is reallocated to a school district or charter school bond issuer pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the public school capital construction assistance board.

(4) The public school capital construction assistance board shall carry forward to the next calendar year any portion of the qualified school construction bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year. In selecting projects to assist the financing or refinancing of pursuant to article 43.7 of title 22, C.R.S., and in selecting projects of school districts for the purpose of allocating the qualified school construction bond volume cap pursuant to this section, the public school capital construction assistance board shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1) (b). The public school capital construction assistance board shall use or allocate the qualified school construction bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1) (b) to minimize the qualified school construction bond volume cap that has not been used on bonds issued or one or more lease-purchase agreements entered into on or before the expiration of the qualified school construction bond program. A school district to which the school district qualified school construction bond volume cap has been allocated under federal law or a school district or charter school bond issuer to which the qualified school construction bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the public school capital construction assistance board. Any volume cap relinquished may be used by the public school capital construction assistance board to enter into lease-purchase agreements to assist the financing or refinancing of projects pursuant to article 43.7 of title 22, C.R.S., may be reallocated by the board to a school district or charter school bond issuer for the purpose of financing or refinancing a project approved by the board, or may be carried forward to the next calendar year. The public school capital construction assistance board may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified school construction bond volume cap will be allocated.

**Source:** L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2202, § 1, effective June 2.

**11-59.7-107. Qualified energy conservation bond volume cap.** (1) The qualified energy conservation bond volume cap shall be administered by the Colorado energy office pursuant to this section. The Colorado energy office shall allocate the qualified energy conservation bond volume cap to the state and large local governments in accordance with federal law for the purpose of financing or refinancing projects approved by the Colorado energy office. The qualified energy conservation bond volume cap for calendar year 2009 shall be allocated by the thirtieth day following June 2, 2009. The qualified energy conservation bond volume cap for each subsequent calendar year shall be allocated on or before February 15 of the calendar year.



(2) The state may reallocate any portion of the qualified energy conservation bond volume cap allocated or reallocated to the state pursuant to this section to any public entity for the purpose of financing or refinancing projects approved by the Colorado energy office.

(3) Any portion of the qualified energy conservation bond volume cap for a calendar year that is allocated to a large local government pursuant to subsection (1) of this section that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically revert to the Colorado energy office. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the Colorado energy office on December 1 of the calendar year. The Colorado energy office may reallocate to any public entity for the purpose of financing or refinancing a project approved by the office, or carry forward pursuant to subsection (4) of this section, any volume cap that reverts to the office pursuant to this subsection (3). Any volume cap that is reallocated to a public entity pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the Colorado energy office.

(4) The Colorado energy office shall carry forward to the next calendar year any portion of the qualified energy conservation bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year. In selecting projects for the purpose of allocating the qualified energy conservation bond volume cap, the Colorado energy office shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1) (b). The Colorado energy office shall allocate the qualified energy conservation bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1) (b) to minimize the qualified energy conservation bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into on or before the expiration of the qualified energy conservation bond program. The Colorado energy office may allocate the qualified energy conservation bond volume cap to the state pursuant to this section in anticipation of the enactment by the general assembly of legislation authorizing a lease-purchase agreement. The state, any large local government, or any other public entity to which the qualified energy conservation bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the Colorado energy office. Any volume cap relinquished may be reallocated by the Colorado energy office to any public entity to finance or refinance a project approved by the office or may be carried forward to the next calendar year. The department of local affairs, in consultation with the Colorado energy office, may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified energy conservation bond volume cap will be allocated.

**Source:** L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2204, § 1, effective June 2. L. 2012: Entire section amended, (HB 12-1315), ch. 224, p. 956, § 2, effective July 1.

**11-59.7-108. Recovery zone economic development bond volume cap - recovery zone facility bond volume cap.** (1) The recovery zone economic development bond volume cap and the recovery zone facility bond volume cap shall be administered by the commission on higher education pursuant to this section and, to the extent provided in subsection (5) of this section, the department of local affairs.

(2) Subject to the provisions of subsections (3) to (7) of this section, the commission on higher education shall separately allocate the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap to counties and large municipalities in accordance with federal law for the purpose of financing or refinancing projects that are located in recovery zones, are approved by the commission, and either are

or are to be owned or used by one or more public institutions of higher education or are expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility.

(3) Except as otherwise provided in subsection (5) of this section, any portion of the recovery zone economic development bond volume cap or recovery zone facility bond volume cap allocated to a county or a large municipality pursuant to subsection (2) of this section that has not been used on bonds issued or a lease-purchase agreement entered into to finance or refinance a project that is located in a recovery zone, is approved by the commission on higher education, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of any calendar year shall, on November 11 of the calendar year, automatically revert to the commission. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the commission on higher education on December 1 of the calendar year. The commission on higher education may reallocate any recovery zone economic development bond volume cap or recovery zone facility bond volume cap that reverts to the commission pursuant to this subsection (3) to any public entity for the purpose of financing or refinancing a project that is located in a recovery zone, is approved by the commission, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility or may carry the volume cap forward pursuant to subsection (4) of this section. Any recovery zone economic development bond volume cap or recovery zone facility bond volume cap that is reallocated to a public entity pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into to finance or refinance a project that is located in a recovery zone, is approved by the commission on higher education, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility by noon, prevailing Denver time, on December 31 of a calendar year, shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the commission.

(4) The commission on higher education shall carry forward to the next calendar year any portion of the recovery zone economic development bond volume cap or recovery zone facility bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year.

(5) Notwithstanding any other provision of this section, if any portion of the recovery zone economic development bond volume cap or the recovery zone facility bond volume cap, including any portion that has been carried forward pursuant to subsection (4) of this section, has not been used on bonds issued or a lease-purchase agreement entered into by the ninetieth day preceding the date on which the recovery zone economic development bond program or recovery zone facility bond program, as applicable, is to expire under federal law, the remaining volume cap shall be allocated by the department of local affairs to public entities for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable. Any portion of any volume cap so allocated that has not been used on bonds issued or a lease-purchase agreement entered into by the fifteenth day preceding the date on which the recovery zone economic development bond program or recovery zone facility bond program, as applicable, is to expire under federal law shall revert to the department of local affairs, which shall



reallocate the volume cap to public entities for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable.

(6) In selecting projects for the purpose of allocating the recovery zone economic development bond volume cap or recovery zone facility bond volume cap, the commission on higher education and the department of local affairs shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1) (b). The commission on higher education and the department of local affairs shall allocate the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1) (b) to minimize the volume cap that has not been used on bonds issued or one or more lease-purchase agreements entered into at the expiration of the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, under federal law. Any county or large municipality to which the recovery zone economic development bond volume cap or recovery zone facility bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the commission on higher education or, in the circumstances described in subsection (5) of this section, the department of local affairs. Any volume cap relinquished may be reallocated by the commission on higher education to any public entity for the purpose of financing or refinancing a project that is located in a recovery zone, has been approved by the commission, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility, may be carried forward to the next calendar year, or, if the circumstances described in subsection (5) of this section apply, may be reallocated by the department of local affairs for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable. The commission on higher education and the department of local affairs may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap that they are respectively responsible for allocating pursuant to this section will be allocated.

(7) On or before the one hundred eightieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, is to expire under federal law, the commission on higher education shall deliver to the department of local affairs a written report describing:

(a) The stimulus obligations that have been issued or entered into using the recovery zone economic development bond volume cap or recovery zone facility bond volume cap;

(b) The stimulus obligations that the commission on higher education expects to be issued or entered into with the recovery zone economic development bond volume cap or recovery zone facility bond volume cap on or before the ninetieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, is to expire under federal law; and

(c) The actions that have not yet been taken and the events that have not yet occurred but that must be taken or that must occur before the stimulus obligations described in paragraphs (a) and (b) of this subsection (7) are issued or entered into, the date on which the actions and events are scheduled to be taken or to occur, and the commission's analysis of the likelihood that the actions or events will be taken or will occur and that the stimulus obligations will be issued or entered into on or before the ninetieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, is to expire under federal law.

**11-59.7-109. Qualified zone academy bond volume cap.** (1) The qualified zone academy bond volume cap shall be administered by the public school capital construction assistance board pursuant to this section. The qualified zone academy bond volume cap shall be allocated to school districts to finance or refinance projects approved by the public school capital construction assistance board.

(2) Any portion of the qualified zone academy bond volume cap for a calendar year that is allocated to a school district pursuant to subsection (1) of this section and that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically revert to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year. The public school capital construction assistance board may reallocate to any school district for the purpose of financing or refinancing a project approved by the board any volume cap that reverts to the board pursuant to this subsection (2) or may carry the volume cap forward pursuant to subsection (3) of this section. Any volume cap that is reallocated to a school district pursuant to this subsection (2) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the public school capital construction assistance board.

(3) The public school capital construction assistance board shall carry forward to the next calendar year any portion of the qualified zone academy bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year.

(4) In selecting projects for the purpose of allocating the qualified zone academy bond volume cap, the public school capital construction assistance board shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1) (b). The public school capital construction assistance board shall allocate the qualified zone academy bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1) (b) to minimize the qualified zone academy bond volume cap that has not been used on bonds issued or lease-purchase agreements entered into by the expiration of the qualified zone academy bond program. Any school district to which the qualified zone academy bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the public school capital construction assistance board. Any volume cap relinquished may be reallocated by the public school capital construction assistance board to a school district to finance or refinance a project approved by the board or may be carried forward to the next calendar year. The public school capital construction assistance board may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified zone academy bond volume cap will be allocated.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2208, § 1, effective June 2.

**11-59.7-110. Recovery and reinvestment act finance authorities.** (1) Two or more public entities that are authorized to issue or enter into one or more types of stimulus obligations or one or more public entities that are authorized to issue or enter into one or more types of stimulus obligations and one or more public entities that may use or benefit from the project or projects to be financed or refinanced by one or more types of stimulus obligations may, by or pursuant to one or more contracts with each other, create a separate legal entity, to be known as a recovery and reinvestment act finance authority, for the purposes of issuing or entering into stimulus obligations of the type or types, providing for the use or distribution of the proceeds of the stimulus obligations, providing for the payment



of the stimulus obligations, and addressing other matters relating to the stimulus obligations and the property and operations of the recovery and reinvestment act finance authority.

(2) The contract pursuant to which a recovery and reinvestment act finance authority is created shall specify:

(a) The name and purpose of the authority and the type or types of stimulus obligations that the authority is authorized to issue or enter into;

(b) The establishment and organization of the governing body of the authority, which shall be a board of directors in which all legislative power of the authority is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the authority, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless otherwise specifically provided, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board; and

(IV) The duties of the board;

(c) The obligations and rights of the contracting public entities;

(d) Provisions for the disposition, division, or distribution of any property of the authority;

(e) The term of the contract creating the authority, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that the contract may not be rescinded or terminated so long as the authority has bonds or one or more lease-purchase agreements outstanding unless provision for full payment of the bonds or lease-purchase agreement or agreements, by escrow or otherwise, has been made pursuant to the terms of the bonds or lease-purchase agreement or agreements;

(f) The provisions for the amendment of the contract creating the authority;

(g) Any intention of the contracting public entities to create the authority as, and have the authority conduct its business in a manner that satisfies all requirements of the constitution and laws of the state for maintaining the status of, an enterprise, as defined in section 20 (2) (d) of article X of the state constitution; and

(h) The conditions required when adding or deleting public entities to or from the contract.

(3) The general powers of a recovery and reinvestment finance authority shall include the following powers:

(a) To issue or enter into bonds and lease-purchase agreements that qualify as the type or types of stimulus obligations identified in the contract;

(b) To use or distribute the proceeds of its stimulus obligations for the benefit of one or more of the contracting public entities;

(c) To make and enter into ancillary agreements and other contracts and agreements with the contracting public entities and other persons;

(d) To employ agents and employees, to enter into contracts with attorneys, accountants, investment bankers, and other consultants, and to do and perform any acts and things authorized by this section under, through, or by means of any employee, agent, or person with which it contracts;

(e) To sue and be sued in its own name;

(f) To have and use a corporate seal;

(g) To adopt, by resolution, bylaws, rules, and regulations respecting the exercise of its powers and the carrying out of its purposes;

(h) To deposit moneys not then needed in the conduct of its affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making deposits, the board of directors of the authority may appoint, by written resolution, one or more persons to act as custodians of the moneys. The persons shall give surety bonds in such amounts and form and for such purposes as the board of directors requires.

(i) To exercise any other powers that are necessary or convenient to the exercise of its other powers.

(4) A recovery and reinvestment act finance authority shall be a political subdivision and a public corporation of the state, separate from the parties to the contract creating the authority, and shall be a validly created and existing political subdivision and public corporation of the state irrespective of whether a public entity withdraws, whether voluntarily, by operation of law, or otherwise, from the authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract pursuant to the terms of the contract. A recovery and reinvestment act finance authority shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

(5) The income or other revenues of a recovery and reinvestment act finance authority and all property at any time owned by an authority shall be exempt from all taxation and assessments in the state.

(6) The contracting public entities may provide in the contract creating a recovery and reinvestment act financing authority for payment to the authority of moneys from any legally available source to be used for payment of the bonds, lease-purchase agreements, and contractual and other obligations and liabilities of the authority.

(7) (a) To carry out the purposes for which a recovery and reinvestment act finance authority was created, the authority may issue bonds and enter into lease-purchase agreements payable solely from amounts paid to the authority from the contracting public entities, amounts paid to the authority by other persons, and any other available moneys of the authority. The terms, conditions, and details of the bonds or lease-purchase agreements and the procedures related thereto shall be set forth in the stimulus obligation documents authorizing the bonds or lease-purchase agreements. The terms, conditions, and details of the bonds or lease-purchase agreements shall, as nearly as may be practicable and subject to the provisions of sections 11-59.7-104 and 11-59.7-105, be substantially the same as those provided in part 6 of article 4 of title 43, C.R.S., relating to regional transportation authorities. Bonds or lease-purchase agreements issued or entered into under this subsection (7) shall not constitute a debt of a recovery and reinvestment act finance authority or a debt or multiple-fiscal year financial obligation of the state or any of the contracting public entities within the meaning of any constitutional or statutory limitations or provisions. Each bond or lease-purchase agreement issued or entered into under this subsection (7) shall recite in substance that the bond or lease-purchase agreement, including the interest thereon, is payable solely from the revenues and other available funds of the recovery and reinvestment act finance authority pledged for the payment thereof and that the bond or lease-purchase agreement does not constitute a debt of the authority or a debt or multiple-fiscal year financial obligation of the state or any of the contracting public entities within the meaning of any constitutional or statutory limitations or provisions.

(b) The stimulus obligation documents under which bonds are issued or lease-purchase agreements are entered into pursuant to paragraph (a) of this subsection (7) shall constitute a contract with the holders thereof and may contain such provisions as are determined by the board of the recovery and reinvestment act finance authority to be appropriate and necessary in connection therewith and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the authority.

(8) The powers granted to a recovery and reinvestment act finance authority pursuant to this section are supplemental to and shall in no manner limit the powers of public entities to enter into intergovernmental agreements or contracts or to establish separate legal entities pursuant to any other provision of law.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2209, § 1, effective June 2.

**11-59.7-111. Reporting requirements.** (1) A public entity that issues or enters into a stimulus obligation authorized by the allocation or reallocation of the volume cap to the public entity pursuant to section 11-59.7-106, 11-59.7-107, 11-59.7-108, or 11-59.7-109, by the public school capital construction assistance board, the Colorado energy office, the commission on higher education, or the department of local affairs, as applicable, shall



deliver a report to the entity that allocated or reallocated the volume cap within thirty days after the stimulus obligation is issued or entered into. The report shall include the following information and any other information requested by the entity that allocated or reallocated the volume cap:

- (a) The type of stimulus obligation;
- (b) The state law or laws under which the stimulus obligation was issued or entered into;
- (c) The date on which the stimulus obligation was issued or entered into;
- (d) A description of the project financed or refinanced with the proceeds of the stimulus obligation;
- (e) The principal amount, interest rates or method for determining the interest rates, and maturity dates for the stimulus obligation and a schedule showing all scheduled payments on the stimulus obligation;
- (f) The person or persons to which the stimulus obligation was sold;
- (g) The terms on which the stimulus obligation was sold, including but not limited to any premium or discount at which the stimulus obligation was sold and any redemption or tender provisions applicable to the stimulus obligation;
- (h) A description of any credit or liquidity enhancement or credit or liquidity support for the stimulus obligation and the amounts paid or to be paid for the enhancement or support;
- (i) A description of any interest rate exchange agreement, interest rate cap agreement, or other similar agreement entered into in connection with the stimulus obligation;
- (j) A copy of form 8038, 8038G, or other similar form that is filed with the federal internal revenue service in connection with the stimulus obligation; and
- (k) A copy of the official statement, offering document, or other similar document prepared in connection with the sale of the stimulus obligation.

(2) The failure of a public entity to comply with subsection (1) of this section shall not adversely affect the validity of the stimulus obligation issued or entered into, but no public entity that has failed to comply with said subsection (1) with respect to a stimulus obligation shall be authorized to issue or enter into any other stimulus obligation until the entity that allocated or reallocated to the public entity the volume cap that authorized the public entity to issue or enter into the stimulus obligation has certified in writing that the public entity is in compliance with said subsection (1).

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2213, § 1, effective June 2. **L. 2012:** IP(1) amended, (HB 12-1315), ch. 224, p. 958, § 3, effective July 1.

**11-59.7-112. No limitation on powers.** The powers conferred by this article are in addition to and supplemental to and not in substitution for the powers conferred by any other law, and nothing in this article shall be interpreted to limit the powers of any public entity under any other law. If any provision of this article is inconsistent with any provision of any other law, the provisions of this article shall control.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

**11-59.7-113. Executive orders authorized.** This article was enacted in order to authorize public entities to take full advantage of financing opportunities available under the federal recovery and reinvestment act shortly after the enactment of the act and without detailed guidance from the executive branch of the federal government or courts regarding the proper interpretation of the act. If, based on additional information regarding the proper interpretation of the federal recovery and reinvestment act or amendments to the act, the governor determines that any provision of this article is not authorized by or is inconsistent with federal law or regulations or that additional legal authority is needed to authorize public entities to take full advantage of financing opportunities available under the act, the

governor is expressly authorized to issue one or more executive orders that stops the operation or implementation of the unauthorized or inconsistent provision or provides the necessary additional legal authority.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

**11-59.7-113.5. Specified tax credit bonds.** A public entity may elect pursuant to the internal revenue code to treat any stimulus obligation as a specified tax credit bond. Any volume cap allocated to a public entity for stimulus obligations of the same type as a stimulus obligation for which such an election has been made shall apply to the stimulus obligation.

**Source: L. 2010:** Entire section added, (SB 10-200), ch. 234, p. 1028, § 3, effective May 18.

**11-59.7-114. Applicability.** This article shall apply only to stimulus obligations issued or entered into pursuant to the federal recovery and reinvestment act on or before the date the authority to issue or enter into stimulus obligations of such type expires under the federal recovery and reinvestment act.

**Source: L. 2009:** Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

## U.S. AGENCY OBLIGATIONS

### ARTICLE 60

#### U.S. Agency Obligations

11-60-101.	Definitions.	operatives.
11-60-102.	Debentures - legal investments - federal intermediate credit banks - bank for co-	11-60-103. Lawful investments - international banks.
		11-60-104. Article controlling.

**11-60-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Bank for cooperatives" means the corporation known as the central bank for cooperatives and any bank for cooperatives organized and chartered by the governor of the farm credit administration pursuant to the "Farm Credit Act of 1933", as amended.

(2) "Debenture" means an instrument evidencing an obligation issued by a federal intermediate credit bank pursuant to the "Federal Farm Loan Act", as amended, or by a bank for cooperatives pursuant to the "Farm Credit Act of 1933", as amended, and includes consolidated debentures issued by federal intermediate credit banks acting together or banks for cooperatives acting together.

(3) "Federal intermediate credit bank" means any federal intermediate credit bank chartered by the farm credit administration pursuant to the "Federal Farm Loan Act", as amended.

(4) "Funds" includes but is not limited to any moneys or deposits, or any fiduciary, sinking, insurance, investment, retirement, compensation, pension, estate, trust, or other funds, public or private.

(4.5) "Person" means any individual, corporation, business trust, estate, trust, partnership, association, or legal entity other than a public body or officer.

(5) "Public bodies or officers" includes but is not limited to the state of Colorado and any of its institutions, agencies, counties, municipalities, districts, and any political subdivision, department, agency, or instrumentality thereof, and any political or public corporation, board, commission, or officer.



**Source:** L. 57: p. 520, § 1. CRS 53: § 83-3-1. C.R.S. 1963: § 83-3-1. L. 89: (4.5) added, p. 1107, § 8, effective July 1.

**Cross references:** For the “Farm Credit Act of 1933”, see Pub.L. 73-75, codified at 12 U.S.C. sec. 1131 et seq.; the “Federal Farm Loan Act”, referenced in this section, was repealed in 1971 by the “Farm Credit Act of 1971”, which also provided that references to the Farm Loan Act “shall be deemed to refer to the comparable provisions” of the “Farm Credit Act of 1971”, Pub.L. 92-181, codified at 12 U.S.C. sec. 2001 et seq.

**11-60-102. Debentures - legal investments - federal intermediate credit banks - bank for cooperatives.** It is lawful, notwithstanding any restrictions on investments contained in any of the laws of this state, for any bank, trust company, savings bank, savings and loan association, insurance company, credit union, or person, including but not limited to those doing business under any banking, insurance, deposit, fiduciary, or investment laws of the United States or any of the states thereof, to invest any funds in its, his, or their custody, control, or possession in any debentures or other similar obligations issued by a federal intermediate credit bank or by a bank for cooperatives and to use any such debentures as security for public deposits or any other fund in their custody, control, or possession.

**Source:** L. 57: p. 521, § 2. CRS 53: § 83-3-2. C.R.S. 1963: § 83-3-2. L. 89: Entire section amended, p. 1107, § 9, effective July 1.

**11-60-103. Lawful investments - international banks.** It is lawful, notwithstanding any restrictions on investments contained in any of the laws of this state, for any bank, trust company, savings bank, savings and loan association, insurance company, credit union, or person, including but not limited to those doing business under any banking, insurance, deposit, fiduciary, or investment laws of the United States or of any of the states thereof, to invest any funds in its, his, or their custody, control, or possession in the obligations of the international bank for reconstruction and development, the inter-American development bank, the Asian development bank, or the African development bank.

**Source:** L. 57: p. 521, § 3. CRS 53: § 83-3-3. C.R.S. 1963: § 83-3-3. L. 67: p. 564, § 1. L. 69: p. 690, § 1. L. 88: Entire section amended, p. 462, § 1, effective July 1. L. 89: Entire section amended, p. 1107, § 10, effective July 1.

**11-60-104. Article controlling.** Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article are controlling; but nothing in this article shall be construed as modifying part 3 of article 1 of title 15, C.R.S.

**Source:** L. 57: p. 521, § 5. CRS 53: § 83-3-4. C.R.S. 1963: § 83-3-4.

## ARTICLE 61

### Legal Tender

11-61-101. Gold and silver coin a legal tender.

**11-61-101. Gold and silver coin a legal tender.** The gold and silver coin issued by the government of the United States shall be a legal tender for the payment of all debts contracted on or after April 5, 1893, between the citizens of this state. The same shall be received in payment of all debts due to the citizens of this state and in satisfaction of all taxes levied by the authority of the laws of this state.

**Source:** L. 1893: p. 306, § 1. R.S. 08: § 3941. C.L. § 3817. CSA: C. 98, § 1. CRS 53: § 83-2-1. C.R.S. 1963: § 83-2-1.

ANNOTATION

Federal reserve notes are legal tender for all debts. State statute on legal tender cannot prohibit acceptance of federal reserve notes because Congress has the power to declare what is

legal tender for all debts and it has done so by delegation to the federal reserve system. *Walton v. Keim*, 694 P.2d 1287 (Colo. App. 1984).

HOSPITAL AND HEALTH CARE TRUSTS

ARTICLE 70

Hospital and Health Care Trusts

11-70-101.	Trust agreements among a group or association of physicians, dentists, or health care institutions authorized.	11-70-103.	Obligation of participating physicians, dentists, and hospitals limited.
11-70-102.	Title to property of trusts - liability of trust and trustees.	11-70-104.	Application of article.
		11-70-105.	Insurance.
		11-70-106.	Certificate of membership.
		11-70-107.	Workers' compensation.

**11-70-101. Trust agreements among a group or association of physicians, dentists, or health care institutions authorized.** (1) There is hereby authorized the establishment, maintenance, administration, and operation of any trust, established by agreement of any group or association of physicians, dentists, or health care institutions, properly licensed by the state of Colorado, as grantor, with such physicians, dentists, or health care institutions as beneficiaries, for the purpose of insuring against loss by the payment of compensation under the Colorado workers' compensation law and general public liability claims based upon acts or omissions of such physicians, dentists, or health care institutions, including, without limitation, claims based upon malpractice. Such group or association of physicians, dentists, or health care institutions may, by trust agreement among themselves and a trustee or trustees of their selection, specify the terms, conditions, and provisions of such a trust.

(2) Upon approval of the executive director of the department of labor and employment and if the terms of the trust agreement so authorize, the following entities may be included as participants in or members of a trust created pursuant to subsection (1) of this section:

- (a) Organizations or associations in which licensed health care institutions are qualified members;
- (b) Entities which own or operate otherwise qualified licensed health care institutions under this article; or
- (c) Residential, retirement, or personal care facilities, whether or not such facilities are required to be licensed by this state.

**Source:** **L. 77:** Entire article added, p. 594, § 1, effective July 1. **L. 86:** Entire section amended, p. 604, § 1, effective April 3. **L. 90:** Entire section amended, p. 563, § 29, effective July 1. **L. 91:** Entire section amended, p. 654, § 1, effective March 29.

**11-70-102. Title to property of trusts - liability of trust and trustees.** The trustees of trusts established pursuant to this article shall hold the legal title to all property at any time belonging to the trusts. They shall have control over such property, as well as the control and management of the business and affairs of the trust. Liability to third persons for any act, omission, or obligation of a trustee of a trust, when acting in such capacity, shall extend to the whole of the trust estate, or so much thereof as may be necessary to discharge such obligation, but no trustee shall be personally liable for any such act, omission, or obligation. The trustees shall have such powers as to the investment of the trust estate as may be set out in the declaration of trust, without regard to the type of investments to which trustees generally are restricted by the provisions of part 8 of article 1 of title 15, C.R.S., nor shall such trustees be subject to the provisions of title 10, C.R.S., concerning the regulation of



insurance; except that the trustees shall report any malpractice claim against a licensed practitioner that is settled or in which judgment is rendered against the insured to the Colorado medical board, which board shall provide statistical data concerning such claims to the commissioner of insurance. Without limiting the generality of the foregoing, the trustees shall have any powers, whether conferred upon them by the agreement of trust or otherwise, to perform all acts necessary or desirable to the conduct of the business of a public liability insurer.

**Source:** L. 77: Entire article added, p. 594, § 1, effective July 1. L. 85: Entire section amended, p. 517, § 1, effective July 1. L. 2010: Entire section amended, (HB 10-1260), ch. 403, p. 1978, § 51, effective July 1.

**11-70-103. Obligation of participating physicians, dentists, and hospitals limited.** No physician, dentist, or hospital which is a participant in such a trust, as grantor, member, beneficiary, or otherwise, shall be liable or obligated to the trust, to the trustee, to any grantor, member, or beneficiary, to any creditor of the trust, or to any other person by virtue of its participation other than for the payment of its full agreed contribution to the trust in accordance with the trust agreement. Without limiting the generality of the foregoing, no participating physician, dentist, or hospital shall incur any other liability of any nature whatever because of or arising out of its participation in such a trust.

**Source:** L. 77: Entire article added, p. 595, § 1, effective July 1. L. 86: Entire section amended, p. 604, § 2, effective April 3.

**11-70-104. Application of article.** All of the provisions of this article shall apply to, and shall confer all rights, privileges, exemptions, and immunities upon, any trust established for the purposes contemplated by this article and the grantors, members, beneficiaries, participants, and trustees thereof, whether such trust was established before or on or after July 1, 1977.

**Source:** L. 77: Entire article added, p. 595, § 1, effective July 1.

**11-70-105. Insurance.** The coverage provided by a trust established pursuant to this article shall be deemed insurance for the purposes of any requirements relating to proof of financial responsibility.

**Source:** L. 77: Entire article added, p. 595, § 1, effective July 1.

**11-70-106. Certificate of membership.** Certification of membership in a trust established pursuant to this article shall meet the certification requirements of any hospital-medical liability requirements.

**Source:** L. 77: Entire article added, p. 595, § 1, effective July 1.

**11-70-107. Workers' compensation.** The coverage provided by a trust established pursuant to this article shall be deemed insurance meeting the requirements of article 44 of title 8, C.R.S., to secure the payment of compensation under the Colorado workers' compensation law, and such trust, upon obtaining approval of the executive director of the department of labor and employment, may act as its own insurance carrier, as provided in section 8-44-201, C.R.S.

**Source:** L. 77: Entire article added, p. 595, § 1, effective July 1. L. 86: Entire section amended, p. 498, § 114, effective July 1. L. 90: Entire section amended, p. 563, § 30, effective July 1.

**COMPLIANCE REVIEW DOCUMENTS****ARTICLE 71****Confidentiality of Compliance  
Review Documents**

11-71-101.	Legislative declaration.	11-71-103.	Applicability of article - con-
11-71-102.	Definitions.		fidentiality of compliance
			review committee docu-
			ments.

**11-71-101. Legislative declaration.** The general assembly hereby finds, determines, and declares that compliance review committees are essential to the operation and performance of financial institutions and that the public will benefit from incentives to identify and remedy compliance issues. To this end, the general assembly declares that compliance review information prepared for or created by a compliance review committee shall be confidential and that persons performing such functions shall be granted qualified immunity.

**Source: L. 95:** Entire article added, p. 210, § 1, effective April 13.

**11-71-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Compliance review committee" means:

(a) An audit committee, loan review committee, or compliance committee appointed by the board of directors of a depository institution, as defined in subsection (3) of this section; or

(b) Any other person who is not an employee or director who acts in an investigatory capacity at the direction of a compliance review committee.

(2) "Compliance review documents" means documents exclusively prepared for or created by a compliance review committee.

(3) (a) "Depository institution" means:

(I) A person organized, chartered, doing business, or holding an authorization charter under the laws of this state or the United States to receive deposits, which person is supervised or examined for the protection of depositors by an official or agency of a state or the United States. "Deposits" includes deposits in savings, share, certificate, or other deposit accounts.

(II) A trust company or other institution that is chartered pursuant to article 109 of this title.

(b) "Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance.

(4) "Loan review committee" means a person or group of persons who, on behalf of a depository institution, reviews loans held by such institution for the purpose of assessing the credit quality of the loans, compliance with the institution's loan policies, and compliance with applicable laws and regulations.

(5) "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other legal entity.

**Source: L. 95:** Entire article added, p. 210, § 1, effective April 13. **L. 2004:** (3)(a)(II) amended, p. 325, § 15, effective April 7; (3)(a)(II) amended, p. 1191, § 23, effective August 4.

**11-71-103. Applicability of article - confidentiality of compliance review committee documents.** (1) This article applies to a compliance review committee the functions of which are to evaluate and seek to improve:

(a) Loan underwriting standards;

(b) Asset quality;



(c) Compliance with federal or state statutory or regulatory requirements;  
(d) Financial reporting to federal or state regulatory agencies; or  
(e) The ability of electronic computing devices and any other computers, software programs, databases, network information systems, firmware, microprocessors, internal time clocks, hardware, or any other device used to interpret, produce, calculate, compute, generate, compare, account for, or sequence a date from, into, or between the years 1999 and 2000.

(f) (I) Repealed.

(II) For the purposes of this section:

(A) "Electronic computing device" shall have the same meaning set forth in section 13-21-603 (2), C.R.S.

(B) Repealed.

(2) (a) (I) Except as provided in subsection (3) of this section, compliance review documents, including those which have been delivered to a federal or state governmental agency, are confidential and not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

(II) Notwithstanding any provision to the contrary, this article shall not be construed to limit the discovery or admissibility in any civil action of documents that are not compliance review documents, including, but not limited to, books, records, loan documents, applications, and appraisals, and other documents otherwise prepared or maintained in the ordinary course of business.

(b) No person shall testify in a civil proceeding concerning such person's participation in the collection, evaluation, reporting, or use of compliance review documents or about the contents of compliance review documents. Such testimony, if offered, is inadmissible in evidence.

(3) Subsection (2) of this section shall not limit the ability of a governmental agency to examine, obtain, or use compliance review documents. Such compliance review documents shall remain confidential and not discoverable or admissible in evidence in any civil action by other than a governmental agency.

**Source:** **L. 95:** Entire article added, p. 211, § 1, effective April 13. **L. 99:** (1)(c) amended and (1)(e) and (1)(f) added, p. 215, § 2, effective July 1. **L. 2011:** (1)(f)(I) and (1)(f)(II)(B) repealed, (HB 11-1303), ch. 264, p. 1149, § 7, effective August 10.

## **BANKS AND INDUSTRIAL BANKS**

### **Colorado Banking Code**

#### **ARTICLE 101**

##### **General Provisions**

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**Cross references:** For bank deposits and collections, see article 4 of title 4; for limitation of this code with reference to corporations, see § 11-107-111; for the "Unclaimed Property Act", see article 13 of title 38.

**Law reviews:** For article, "Commercial and Corporate Law", which discusses recent Tenth Circuit decisions dealing with banking, see 64 Den. U.L. Rev. 184 (1987); for a discussion of recent Tenth Circuit decisions dealing with banking, see 66 Den. U.L. Rev. 681 (1989); for article "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989); for a discussion of recent Tenth Circuit decisions dealing with banking and finance law, see 67 Den. U. L. Rev. 629 (1990).

## PART 1

## SHORT TITLE AND POLICY

11-101-101.	Short title.
11-101-102.	Declaration of policy.

## PART 2

## EFFECT ON EXISTING BANKS

11-101-201.	Effect on existing banks.
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## PART 3

## APPLICATION

11-101-301.	Application of code.
11-101-302.	No private right of action.

## PART 4

## DEFINITIONS

11-101-401.	Definitions.
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## PART 1

## SHORT TITLE AND POLICY

**11-101-101. Short title.** Articles 101 to 109 and article 10.5 of this title shall be known and may be cited as the “Colorado Banking Code”. A reference to the code means the Colorado Banking Code as amended from time to time.

**Source: L. 2003:** Entire article added with relocations, p. 1051, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-1-101 as it existed prior to 2003.

**11-101-102. Declaration of policy.** (1) It is hereby declared to be the policy of the state of Colorado that, to protect the public interest, the business of all state banks be supervised and regulated in such manner as to:

- (a) Preserve and promote:
  - (I) Sound and constructive competition among financial services institutions;
  - (II) A dual federal and state banking system;
  - (III) The security of deposits;
  - (IV) The safe and sound conduct of the business of state banks; and
  - (V) A statewide safe and sound banking system;
- (b) Seek:
  - (I) Regulatory coordination and cooperation; and
  - (II) Regulatory parity among financial services institutions; and
- (c) Encourage diversity in financial products and services.

**Source: L. 2003:** Entire article added with relocations, p. 1051, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-1-101.5 as it existed prior to 2003.

## PART 2

## EFFECT ON EXISTING BANKS

**11-101-201. Effect on existing banks.** The charters of the state banks organized and existing prior to July 1, 2003, under the laws of this state shall continue in full force and effect. All such state banks, and, to the extent applicable, all national banks doing business in this state on or after July 1, 2003, shall, from that date, be subject to the provisions of this article. Any such state bank, by filing an application under this code for an amendment of its charter or for a merger, consolidation, or sale of all, or substantially all, of its assets, or the assets of any department of such bank, shall be deemed to have expressly recognized that it is so subject.

**Source: L. 2003:** Entire article added with relocations, p. 1052, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-1-103 as it existed prior to 2003.



## PART 3

## APPLICATION

**11-101-301. Application of code.** (1) The provisions of this code shall govern the incorporation, organization, corporate functions, merger, consolidation, sale of assets, liquidation, dissolution, and reorganization procedures of corporations operating as banks (whether or not, as a part of and in conjunction with such operations, they engage in the trust or safe deposit business) in the state of Colorado; but the provisions of articles 10.5 and 101 to 107 of this title only apply to industrial banks and trust companies organized and operating under the provisions of articles 108 and 109 of this title when specifically provided in articles 10.5 and 101 to 109 of this title, and articles 108 and 109 of this title shall otherwise govern exclusively industrial banks and trust companies.

(2) (a) (I) The regulation of banking is a matter of statewide concern, and in order to maintain a uniform statewide system of banking and bank regulatory policy in Colorado, the regulation by a political subdivision of deposits, lending, or other services or products provided by banks in accordance with applicable state or federal law shall be prohibited except to the extent expressly permitted under article 10.5 of this title.

(II) Nothing in this subsection (2) shall preclude a political subdivision from enacting and enforcing laws or rules of general applicability concerning public health, safety, or welfare.

(b) For the purposes of this section, “political subdivision” means and includes every county, city and county, city, town, school district, special district, and housing authority within the state.

**Source: L. 2003:** Entire article added with relocations, p. 1052, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-1-105 as it existed prior to 2003.

**11-101-302. No private right of action.** Except as expressly provided in this code, no person, other than the banking board, shall have the right to bring or maintain any private action, at law or in equity, for a violation of or enforcement of this code.

**Source: L. 2003:** Entire article added with relocations, p. 1053, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-1-106 as it existed prior to 2003.

## PART 4

## DEFINITIONS

**11-101-401. Definitions.** As used in this code, unless the context otherwise requires:

(1) “Account holder” means a person having an established demand, savings, or loan account at a Colorado bank.

(2) “Account overline” means a banking transaction pursuant to which an account holder debits his existing demand or savings account even though such debit may create or extend a negative balance to be covered by an extension of credit, or would create a negative balance but for an extension of credit to such account by the Colorado bank.

(3) “Action”, in the sense of a judicial proceeding, means a recoupment, counterclaim, third-party claim, cross-claim, setoff, suit in equity, arbitration, and any other proceeding in which rights are determined.

(3.5) “Affiliate” means any company that directly or indirectly controls, is controlled by, or is under common control with another company.

(4) “Affiliate financial institution” means any bank, industrial bank, or savings and loan association that has its principal place of business in Colorado and that is controlled by a financial institution.

(5) "Bank" means a state bank (other than an industrial bank) or bank and trust company, chartered by this state or a national bank; except that, for the purpose of part 2 of article 104 of this title, "bank" means any bank organized or chartered under articles 10.5 and 101 to 109 of this title, any bank organized or chartered as a bank under the laws of any other jurisdiction, or any bank organized or chartered under chapter 2 of title 12 of the United States Code. The singular "bank" includes the plural "banks".

(6) "Bank holding company" means any company that has direct or indirect control over any banking institution.

(7) "Banking board" means the banking board within the division established pursuant to section 11-102-103.

(8) "Banking institution" means any institution organized or chartered under this code or under chapter 2 of title 12 of the United States Code, but does not include a credit card national bank.

(9) "Banking transactions" means cash withdrawals, deposits, account transfers, payments from bank accounts, disbursements under a preauthorized credit agreement, and loan payments initiated by an account holder at a communications facility and accessing his or her account at a Colorado bank.

(10) "Branch" means any branch bank, branch office, branch agency, additional office, or branch place of business of a financial institution located in this state at which deposits are received, checks are paid, or money is lent.

(11) "Capital and surplus" or "capital stock and unimpaired surplus fund" means paid-in capital stock plus surplus, undivided profits, subordinated notes and debentures, reserves for contingencies and other capital reserves, and the reserve for possible loan losses.

(12) "Colorado affiliate", with respect to a Colorado bank or Colorado trust company, means:

(a) Any company that is controlled by a bank holding company that controls a Colorado bank or Colorado trust company; or

(b) Any company that is controlled by or that controls a Colorado bank or Colorado trust company.

(13) "Colorado bank" means a bank having its principal place of business in Colorado.

(14) "Colorado bank holding company" means a registered bank holding company the operations of which are principally conducted in Colorado. "Colorado bank holding company" does not include an out-of-state bank holding company that acquires control of one or more Colorado bank holding companies or Colorado banks, whether or not its operations are principally conducted in Colorado after such acquisition, or any Colorado bank holding company the control of which or as to which a majority nonvoting equity interest is first acquired by an out-of-state bank holding company on or after July 1, 1988.

(15) "Colorado financial institution" means a financial institution having its principal place of business in Colorado.

(16) "Colorado trust company" means:

(a) A national banking association that has its principal office in Colorado and to which the comptroller of the currency has issued a certificate authorizing the commencement of business and that is required by said comptroller to limit its operations to those of a trust company and any activities related thereto; or

(b) A trust company organized under article 109 of this title, which trust company has its principal office in Colorado.

(16.5) "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

(17) "Commissioner" means the state bank commissioner appointed and serving pursuant to section 11-102-101 (2), who shall be the commissioner of banking referred to in articles 101 to 109 of this title.

(18) "Communications facility" means an attended or unattended electronic information processing device, other than an ordinary telephone instrument, located in this state separate and apart from a Colorado bank and through which account holders and Colorado banks may engage in banking transactions by means of either the instant transmission



(on-line) of electronic impulses to and from the Colorado bank or its data processing agent or the recording of electronic impulses or other indicia of a banking transaction for delayed transmission (off-line) to a Colorado bank or its data processing agent. Such a device located on the premises of a Colorado bank shall be a communications facility if such device is utilized by the account holders of other Colorado banks.

(19) "Community" means a city, town, or incorporated village of this state, or a trade area in this state in unincorporated territory.

(20) "Company" means any corporation, partnership, business trust, association, or similar organization; except that, for the purpose of article 106 of this title, "company" means a bank or trust company that is authorized by the division of banking or the comptroller of the currency to conduct fiduciary business in Colorado.

(21) "Constituent bank" means a party to a merger.

(22) "Continuing bank" means a merging bank the charter of which becomes the charter of the resulting bank.

(23) (a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (23), a company with "control" means:

(I) A company that, either directly, indirectly, or acting through one or more persons, owns, controls, or has the power to vote twenty-five percent or more of the voting securities of another company; or

(II) A company that controls in any manner the election of a majority of the directors, managers, or trustees of another company.

(b) For the purpose of part 2 of article 104 of this title, "control" means that:

(I) A company, either directly, indirectly, or acting through one or more persons, owns, controls, or has power to vote twenty-five percent or more of the voting securities of a bank holding company or of a bank; or

(II) A company controls in any manner the election of a majority of the directors, managers, or trustees of a bank holding company or of a bank.

(c) For the purpose of section 11-104-101, "control" means that:

(I) Any company directly or indirectly or acting through one or more persons owns, controls, or has power to vote twenty-five percent or more of the voting securities of the banking institution; or

(II) The company controls in any manner the election of a majority of the directors, managers, or trustees of the banking institution.

(24) "Converted bank" means the same bank after the conversion.

(25) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(26) "Court" means a court of competent jurisdiction.

(27) "Credit card national bank" means an institution that is organized or chartered as a national bank under chapter 2 of title 12 of the United States Code, that engages only in credit card operations, and that qualifies for exception from the definition of a "bank" under section 2 (c) (2) (F) of the federal "Bank Holding Company Act of 1956", Public Law 84-511, 12 U.S.C. sec. 1841 (c) (2) (F).

(28) "De novo branch" means a branch of a financial institution that:

(a) Is originally established by the financial institution as a branch; and

(b) Does not become a branch of such financial institution as a result of:

(I) The acquisition by the financial institution of a depository institution or a branch of a depository institution; or

(II) The conversion, merger, or consolidation of any such institution or branch.

(29) "Deposit production office" means an office or branch used primarily for the purpose of deposit production.

(30) "Depositor" means a person delivering property or documents to a lessor for safekeeping.

(31) "Division" means the division of banking of this state created by this code.

(32) "Executive officer", when referring to a bank, means a person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the bank, whether or not the officer has an official title, the title designates the officer as an assistant, or the officer is serving without salary or other compensation.

“Executive officer” includes the chairman of the board of directors and the president, every vice-president, and the cashier of a bank, unless any such officer is excluded by resolution of the board of directors or by the bylaws of the bank from participation, other than in the capacity of a director, in major policy-making functions of the bank and such officer does not actually participate therein.

(33) “Federal bank holding company act” means the federal “Bank Holding Company Act of 1956”, Pub.L. 84-511, 12 U.S.C. sec. 1841 et seq., as amended.

(34) “Fiduciary” means original or successor trustee of an expressed or implied trust, including but not limited to a resulting or constructive trust, special administrator, executor, administrator, administrator c.t.a., guardian, guardian-trustee or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust acting alone or with others.

(35) “Fiduciary business” means estate and trust administration, conservatorship, agency, escrow, and custodian business and any other fiduciary business.

(36) “Financial institution” means any bank, bank holding company, industrial bank, industrial bank holding company, savings and loan association, federal savings bank, or thrift holding company.

(37) (a) “Foreign bank” means any bank, including any commercial bank, merchant bank, or other institution that engages in banking activities that are usual in connection with the business of banking in the nations where such institution is organized or operating, other than a bank that is organized under the laws of a state of the United States or a national bank that maintains its head office in a state of the United States.

(b) As used in this subsection (37), “foreign nation” means any nation other than the United States, including any subdivision, territory, trust territory, dependency, or possession of any such nation. “Foreign nation” includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.

(38) “Good faith” means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized.

(39) “Home state” means:

(a) In the case of a national bank, the state in which the main office of the bank is located; and

(b) In the case of a state bank, the state in which the bank is chartered.

(40) “Interested party” means, with respect to the fiduciary business of a transferor for which a successor is substituted:

(a) Each person who is readily identifiable as a beneficiary or devisee because of such person’s receipt of statements of account;

(b) A parent, custodian, conservator, or guardian who receives statements of account on behalf of a minor beneficiary or devisee;

(c) Each cofiduciary;

(d) Each surviving settlor of a trust;

(e) Each issuer of a security for which the transferor acts as a fiduciary;

(f) The plan sponsor for every employee benefit plan;

(g) The principal of every agency account; and

(h) The guardian or conservator of the person under guardianship.

(41) “Item” means any instrument for the payment of money even though not negotiable, but does not include money.

(42) “Lessee” means a person contracting with a lessor for the use of a safe deposit box.

(43) “Lessor” means a bank, as defined in subsection (5) of this section, or subsidiary thereof, that rents or maintains safe deposit facilities. “Lessor” does not include a financial institution regulated by article 30, 46, 108, or 109 of this title or a credit union chartered under the laws of the United States.

(44) “Merger” includes consolidation.

(45) “Merging bank” means a party to a merger.

(46) “National bank” means a national banking association.



(47) “Officer”, when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant trust officer, assistant vice-president, assistant treasurer, assistant cashier, assistant comptroller, assistant secretary, auditor, or any person who performs the duties appropriate to those offices.

(48) The state where “operations are principally conducted” means that state where the largest percentage of the aggregate deposits of all bank subsidiaries of the bank holding company are held.

(49) “Order” means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the commissioner or the banking board of any matter other than the making of rules of general application.

(50) “Out-of-state bank” means a bank the home state of which is another state. The term “out-of-state bank” includes a foreign bank.

(51) “Out-of-state bank holding company” means a registered bank holding company the operations of which are principally conducted outside of Colorado.

(52) “Person” means an individual, corporation, partnership, joint venture, trust estate, unincorporated association, or any other legal or commercial entity.

(53) “Registered bank holding company” means a bank holding company registered with the federal reserve board pursuant to the federal “Bank Holding Company Act”.

(54) “Resulting bank” means the combined banks and trust companies carrying on business upon completion of a merger.

(55) “Retailer” means a person primarily engaged in the business of selling or leasing goods or services to consumers.

(56) “Retail location” means a location where the primary business is selling or leasing goods or services to consumers. The term includes only that portion of the building or structure in which such goods or services are offered for sale or lease, but it does not include a wholesale or manufacturing business.

(57) “Safe deposit box” means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor.

(58) “State bank” means a bank (other than an industrial bank), or bank and trust company, chartered by this state.

(59) “Successor” means a company that replaces the transferor as fiduciary for all or part of the fiduciary business of the transferor.

(60) “Transferor” means a company that is replaced as fiduciary by a successor for all or part of its fiduciary business.

**Source:** L. 2003: Entire article added with relocations, p. 1054, § 3, effective July 1. L. 2004: (43) amended, p. 1192, § 24, effective August 4. L. 2007: (3.5) and (16.5) added, p. 117, § 1, effective March 16. L. 2009: (10) and (43) amended, (HB 09-1053), ch. 159, p. 688, § 6, effective August 5.

**Editor’s note:** This section is similar to former §§ 11-1-102, 11-4-101, 11-6.3-101 (1), 11-6.4-102, 11-6.5-103, 11-7-100.3, 11-9-101, 11-25-102, and 11-10-105 as they existed prior to 2003.

## ANNOTATION

**Annotator’s note.** Since § 11-101-401 is similar to § 11-1-102 as it existed prior to the 2003 recodification of the “Colorado Banking Code”, articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**Banks are the creatures of the state and affected with a public interest.** In re Thornton,

7 F. Supp. 613 (D. Colo. 1934) (decided under repealed laws antecedent to CSA, C. 18, § 1, which were similar to this section).

**Applied in** United Bank v. Quadrangle, Ltd., 42 Colo. App. 486, 596 P.2d 408 (1979).

**ARTICLE 102****Division of Banking**

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**PART 1****COMMISSIONER AND BANKING BOARD**

- 11-102-101. Division of banking - creation - subject to termination - repeal of article.
- 11-102-102. Powers of commissioner.
- 11-102-103. Banking board - repeal.
- 11-102-104. Powers and duties of banking board.
- 11-102-105. Roles and authority of banking board and commissioner - rules - exercise of powers.
- 11-102-106. Nontraditional mortgages - consumer protections - rules - incorporation of federal interagency guidance.

**PART 2****PROCEEDINGS**

- 11-102-201. Hearing officers - powers - procedure - order final.
- 11-102-202. Subpoenas - witnesses - production of records.
- 11-102-203. Effect of good faith reliance on orders or rules of banking board.
- 11-102-203.5. Independent administrative review of material supervisory determinations - rules.
- 11-102-204. Court review.

**PART 3****RECORDS, REPORTING, AND INFORMATION**

- 11-102-301. Examinations and examiner's reports.
- 11-102-302. Bank reports to banking board - generally.
- 11-102-303. Bank reports to banking board -

requirements for acquiring control.

Commissioner's annual report - publications.

Records.

Information confidential.

Access to records.

Bank records - preservation - reproduction.

**PART 4****ASSESSMENTS AND FEES**

- 11-102-401. Assessments.
- 11-102-402. Administrative fees.
- 11-102-403. Division of banking cash fund - creation.

**PART 5****CONFLICTS OF INTEREST, PENALTIES, REMOVAL, SUSPENSION, ENFORCEMENT**

- 11-102-501. Banking interests of officers and employees.
- 11-102-502. Exemption from liability - when.
- 11-102-503. Assessment of civil money penalties by banking board.
- 11-102-504. No indemnification or insurance against civil money penalties.
- 11-102-505. Removal of director, officer, or other person.
- 11-102-506. Suspension of director, officer, or other person.
- 11-102-507. Informal enforcement authority.
- 11-102-508. Statements derogatory to state banks - penalty.

**PART 1****COMMISSIONER AND BANKING BOARD**

**11-102-101. Division of banking - creation - subject to termination - repeal of article.** (1) There is hereby created a division of banking within the department of regulatory agencies. The division shall be charged with functions provided by law. Whenever any law of this state refers to the banking department, said law shall be construed as referring to the division of banking.

(2) The administrative head of the division shall be the commissioner of banking, who



shall be the state bank commissioner appointed and serving as provided by law, and the deputies and employees of the commissioner shall also be deputies and employees of the division of banking hereby created. The bank commissioner, at the time of his or her appointment, shall be experienced in the theory and practice of the business and regulation of financial services institutions under the jurisdiction of the banking board.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of banking created by this section.

(b) This article is repealed, effective July 1, 2013.

**Source:** L. 2003: Entire article added with relocations, p. 1059, § 3, effective July 1.  
L. 2004: (3)(b) amended, p. 322, § 1, effective April 7.

**Editor's note:** This section is similar to former § 11-2-101 as it existed prior to 2003.

**11-102-102. Powers of commissioner.** (1) The commissioner shall be the administrative head of the division, shall set administrative policy therefor, and shall be responsible for the internal administration thereof, including personnel matters, records, reports, systems, and procedures.

(2) The commissioner shall be the appointing authority for employees of the division under the state personnel system.

(3) The commissioner shall be responsible for all examination and enforcement functions of the division of banking subject to the policy-making and rule-making authority of the banking board. In carrying out the responsibilities for examinations and enforcement, in addition to other powers conferred by this code and delegated by the banking board, the commissioner has the power to require a bank to:

(a) Comply with the standards that the banking board may prescribe for determining the value of various types of assets;

(b) Charge off the whole or any part of an asset that, at the time of the commissioner's action, could not lawfully be acquired;

(c) Write down an asset to its market value;

(d) File, record, or otherwise make effective liens and other interests in property;

(e) Obtain a financial statement from a person with present or prospective liability to the bank to the extent that the bank can do so;

(f) Obtain insurance against damage to real estate taken as security;

(g) Obtain title insurance for real estate taken as security;

(h) Maintain adequate insurance against such other risks as the commissioner or the banking board may determine to be necessary and appropriate for the protection of depositors and the public.

(4) The commissioner shall have primary responsibility for the preparation of the preliminary budget draft for the division for review and comment by the banking board prior to its submission to the department of regulatory agencies.

(5) The commissioner shall have the power to perform any acts and to make any decisions incidental to or necessary for carrying out any functions specified by this code or delegated by the banking board pursuant to this code.

(6) The commissioner has the power, subject to the approval of the banking board and subject to the laws and state constitution, to appoint a chief deputy commissioner and such other deputy commissioners as shall be necessary to efficiently perform the duties of the commissioner. All such officers and employees shall receive such compensation for their services as shall be fixed under general provisions of law relating to the compensation of state officers and employees.

(7) The commissioner, the deputies, and all other employees of the division shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by this code or by law. Willful violation of this oath is declared to be a criminal offense. The commissioner, all

deputies, and all other employees of the division shall be subject to article 18 of title 24, C.R.S.

(8) The commissioner may delegate to any officer or employee of the division any of the commissioner's powers and may designate any officer or employee of the division to perform any of the commissioner's duties.

(9) The commissioner, and such other officers and employees handling money or securities in the course of their duties as the banking board may determine, shall be bonded in such amount as the banking board may fix. The cost thereof shall be charged as an expense of the division.

(10) The commissioner, all deputies, and all the employees, except special deputies and assistants employed in liquidating failed banks, shall devote their entire time and attention to the duties of their several positions and shall not, during their terms of service, receive any salary or compensation whatsoever from any bank.

(11) In the case of a vacancy in the office of the commissioner for any cause, and until such vacancy is filled, the chief deputy commissioner shall have and exercise all the powers and duties conferred by law or by the banking board upon the commissioner, with the same authority as if those powers and duties were exercised and performed by the commissioner. If there is no chief deputy at the time of such vacancy, a chief deputy shall be appointed.

(12) The commissioner shall have a seal of office containing the words "Commissioner of Banking of Colorado" in the form of a circle and the word "seal" within the circle.

**Source: L. 2003:** Entire article added with relocations, p. 1060, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-106 as it existed prior to 2003.

**11-102-103. Banking board - repeal.** (1) (a) There is hereby established in the division a banking board, which shall consist of nine members as further specified in this section.

(b) The members of the banking board serving on June 30, 2003, shall continue to serve until the expiration of their terms of office in accordance with the provisions of this section.

(2) (a) There shall be five members who during their tenure are, and shall remain, executive officers of state banks, each of whom shall have not less than five years' practical experience as an active executive officer of a bank. At least two of such members shall represent banks having less than one hundred fifty million dollars in total assets at the time of their appointment.

(b) There shall be one member who during his or her tenure is, and shall remain, an executive officer of a business licensed pursuant to article 52 of title 12, C.R.S.

(c) There shall be one member who during his or her tenure is, and shall remain, the executive officer of a trust company.

(d) There shall also be two members to serve as public members of the banking board who shall have expertise in finance through their current experience in business, industry, agriculture, or education.

(3) No member of the banking board shall have any interest, direct or indirect, in a bank in which another member of the banking board has any such interest. Not more than one of the members shall be an executive officer or employee of any one bank holding company or affiliate thereof.

(4) Of the members appointed under subsection (2) of this section, at all times at least one shall reside west of the continental divide.

(5) Members shall be appointed by the governor, with the consent of a majority of the elected members of the senate at the next meeting thereof. The term of office of each member shall be four years. In the event of the death, resignation, nonresidency in the congressional district from which appointed, inability to act, or refusal to act of any member of the banking board, or the occurrence of any other event that disqualifies the member from serving the remainder of his or her term on the banking board, the governor within forty-five days thereafter, or in the event of the governor's failure to act, the banking board, shall make an interim appointment of a member to serve for the unexpired term on the banking board, subject to the approval of a majority of the elected members of the senate at the next



meeting thereof. A member who moves out of the congressional district from which appointed shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor may, after notice and hearing, remove a member for cause. Any banking board member who is absent from three consecutive banking board meetings is subject to immediate removal by the governor.

(6) Each member of the banking board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.

(7) The banking board shall meet at least once in each calendar month. The chairman of the banking board may call additional meetings of the banking board upon at least seventy-two hours' notice to all members of the banking board and shall do so upon the request of two members. All members of the banking board shall be subject to immediate call in the event of an emergency. Four members of the banking board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the banking board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under this code. In the event that less than a quorum of the banking board is present during the conduct of the hearing, at least a quorum of the banking board shall read the entire record before voting thereon. No member shall participate in a proceeding before the banking board when any corporation, partnership, or unincorporated association of which he or she is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder is a party to such proceedings. A member may disqualify himself or herself from participating in a proceeding for any other cause deemed by him or her to be sufficient.

(8) A quorum may be established by means of a conference telephone call, which shall be recorded in the banking board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the banking board may hold an executive session to consider certain matters required by statute to be kept confidential under this code. Any agenda and the minutes of executive sessions shall be kept confidential by the banking board.

(9) The division shall provide such clerical, technical, and legal assistance as the banking board may require.

(10) The members of the banking board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Willful violation of this oath shall be a criminal offense.

(11) The banking board shall elect a chairperson from among its members to serve for a term not exceeding two years, as determined by the banking board. No chairperson shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (6) of this section, the chairperson shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the banking board.

(12) The banking board may enter into contracts with temporary employees and for the provision of such other services as it may deem necessary in accordance with section 13 of article XII of the state constitution.

(13) This section is repealed, effective July 1, 2013.

**Source:** L. 2003: Entire article added with relocations, p. 1062, § 3, effective July 1.  
L. 2004: (1)(a), (2)(a), and (4) amended and (13) added, p. 21, §§ 3, 1, effective March 3.  
L. 2009: (2)(b) amended, (HB 09-1053), ch. 159, p. 687, § 3, effective August 5.

**Editor's note:** This section is similar to former § 11-2-102 as it existed prior to 2003.

## ANNOTATION

**Annotator's note.** Since § 11-102-103 is similar to § 11-2-102 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**Quorum must be present to approve action of the banking board.** The general assembly intended that any and all actions of the banking board may be approved at a meeting at which at least a quorum is present, and that any such action taken by a majority of the quorum shall be the action of the board. There are no exceptions to its applicability and therefore it governs all acts of the banking board, including the

granting of a state bank charter. *Peoples Bank v. Banking Bd.*, 164 Colo. 564, 436 P.2d 681 (1968).

**Banking board member is not disqualified from participating in consideration of issues** where none of the members of the banking board had any direct, personal, financial, or official stake in the decision to seize and liquidate the assets of the bank, and where there was no other conflict of interest sufficient to overcome the presumption of fairness. *First Bank v. Dept. of Regulatory Agencies*, 852 P.2d 1345 (Colo. App. 1993).

**Applied** in *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**11-102-104. Powers and duties of banking board.** (1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

(a) Make, modify, reverse, and vacate rules for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title;

(b) Make, promulgate, alter, amend, or revise reasonable rules as may be necessary for the enforcement and execution of the provisions of the "Money Order Act", article 52 of title 12, C.R.S.; and

(c) Regulate procedure and practice of the banking board.

(2) In addition to any other powers conferred on it by this code, the banking board has the power to:

(a) Make all final decisions with respect to ownership including, but not limited to:

(I) Chartering and conversions;

(II) Mergers;

(III) Acquisitions; and

(IV) Change of control;

(b) Make all final decisions with respect to certification pursuant to section 11-104-202;

(c) Make all final decisions with respect to the taking of possession, liquidation, or reorganization of banks and the emergency grant of new charters and branch facilities;

(d) Make all final decisions with respect to requests to exercise trust, fiduciary, and agency powers.

(3) The banking board has the power to prohibit the taking of deposits or to restrict the withdrawal of deposits, or both, from any one or more state banks when the banking board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state bank.

(4) The banking board has the power to authorize state banks under circumstances in which state banks are not given authority under this code to act without the approval of the banking board; to participate in any public agency created after July 1, 1957, under the laws of this state or the United States, the purpose of which is to afford advantages or safeguards to banks or depositors; and to authorize compliance with all requirements and conditions imposed upon such participants.

(5) The banking board has the power to authorize such banks to engage in any banking activity in which state banks could engage were they operating as national banks at the time such authority is granted, so long as such activity is not prohibited elsewhere in this code and to the extent permissible under rules of the banking board promulgated pursuant to subsection (1) of this section consistent with the policies set forth in section 11-101-102, or under any other provision of this code. State banks may engage in interstate branching to the same extent as if they were operating as national banks so long as such activity is in accordance with the rules of the banking board.

(5.5) (a) The banking board has the power to issue a state bank charter to a limited liability company, as that term is defined in section 7-80-102, C.R.S., so long as the limited



liability company meets the requirements of this code. In the event of a conflict between the requirements of the provisions of this code and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., a state bank organized as a limited liability company shall be subject to the requirements of this code.

(b) The banking board has the power to issue an industrial bank charter to a limited liability company, as that term is defined in section 7-80-102, C.R.S., so long as the limited liability company meets the requirements of article 108 of this title. In the event of a conflict between the requirements of the provisions of article 108 of this title and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., an industrial bank organized as a limited liability company shall be subject to the requirements of article 108 of this title.

(c) The banking board has the power to issue a trust company charter to a limited liability company, as that term is defined in section 7-80-102, C.R.S., so long as the limited liability company meets the requirements of article 109 of this title. In the event of a conflict between the requirements of the provisions of article 109 of this title and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., an industrial bank organized as a limited liability company shall be subject to the requirements of article 109 of this title.

(d) The banking board shall promulgate rules to effectuate the provisions of this subsection (5.5).

(6) The banking board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order or ruling made by a hearing officer acting pursuant to section 11-102-201 or the commissioner acting pursuant to authority delegated by the banking board.

(7) The banking board has the power to order any person to cease violating a provision of this code or a rule issued pursuant to this code or to cease engaging in any unsound banking practice, to impose civil money penalties pursuant to section 11-102-503, to suspend or remove a director or officer pursuant to section 11-102-505, and to take such other enforcement action as is authorized by sections 11-102-506 to 11-102-508 and any other provision of this code.

(8) With respect to any action pursuant to subsection (3) or (7) of this section, ten days' notice by certified mail, return receipt requested, and the opportunity for a hearing shall be provided to the bank, the directors of the bank, and any person ordered to cease violating provisions of this code pursuant to subsection (7) of this section in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action without notice or hearing but shall promptly afford a subsequent opportunity for hearing upon application by the bank or directors of the bank to rescind the action taken. With respect to any authorization requested pursuant to subsection (4) or (5) of this section, the banking board may, on its own motion, or shall if requested by the applicant, hold a hearing on such request.

(9) The banking board has the power to issue a declaratory order with respect to the applicability of this code or a rule issued by the banking board to any person, property, or state of facts under this code.

(10) The banking board has the power to review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies.

(11) The banking board shall annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly for the division.

(12) The banking board has the power to comment on who shall be the bank commissioner and to recommend the termination of the commissioner for cause. The banking board's comments and recommendations shall be given to the appropriate office or officer of the state having appointment or termination powers with regard to the commissioner.

(13) The banking board has the power to perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in this code.

(14) The banking board shall not delegate to the commissioner any of its powers under subsections (1) to (12) of this section except informal enforcement powers arising under section 11-102-507, which powers shall be delegable pursuant to subsection (15) of this section.

(15) Except as provided in subsection (14) of this section, the banking board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions; except that all powers under this code vest in the banking board unless delegated to the commissioner by statute.

(16) The banking board may, in its discretion, require the commissioner to report to the banking board periodically with respect to any powers delegated pursuant to subsection (15) of this section.

(17) The banking board shall have a seal of office containing the words "Banking Board of Colorado" in the form of a circle and the word "seal" within the circle.

(18) (a) As described in section 11-109-1001 (5) (b), the banking board may define circumstances that do not constitute transacting business with the public for the purposes of part 10 of article 109 of this title.

(b) As described in section 11-109-1003, the banking board may grant a whole or partial exemption to a private family trust company or proposed private family trust company from compliance with one or more provisions of article 109 of this title only if the banking board determines that the private family trust company or proposed private family trust company does not and will not transact business with the general public.

(c) For the purposes of section 11-109-1003, the banking board shall promulgate rules specifying the provisions of article 109 of this title from which a private family trust company or proposed private family trust company may or may not request an exemption from compliance.

(d) The banking board shall promulgate rules to establish:

(I) Procedures by which a private family trust company or proposed private family trust company may request an exemption from compliance with one or more provisions of article 109 of this title pursuant to section 11-109-1003. The procedures shall include:

(A) The creation of a standard application form to be used by a private family trust company or proposed private family trust company in requesting an exemption; and

(B) The designation of an application fee to be submitted by a private family trust company with each application;

(II) Conditions under which the banking board may revoke an exemption granted to a private family trust company or proposed private family trust company pursuant to section 11-109-1003. The conditions, at a minimum, shall include the following acts or failures to act by the private family trust company:

(A) Making a false statement on any document required to be filed pursuant to article 109 of this title or by any rule promulgated by the banking board;

(B) Failing to submit to or cooperate with an investigation initiated by the banking board pursuant to section 11-109-1003 (3) (b);

(C) Withholding any information from the banking board or the commissioner; or

(D) Violating any provision of article 109 of this title for which the private family trust company does not possess an exemption granted by the banking board pursuant to section 11-109-1003;

(III) Procedures by which a private family trust company, pursuant to section 11-109-1002 (2), is to certify that it is complying with the provisions of article 109 of this title, except for those provisions for which the private family trust company has received an exemption from the banking board pursuant to section 11-109-1003;

(IV) Procedures by which a person who wants to transfer control of a private family trust company pursuant to section 11-109-1005 is to provide to the banking board written notice of his or her intent to transfer control of the company. The procedures shall include minimum requirements for the form of the notice of intent.

(V) Procedures by which a private family trust company that intends to terminate its status as a private family trust company, convert itself to a public trust company, and start transacting business with the general public pursuant to section 11-109-1007 is to submit notice of its intent in writing to the banking board. The procedures shall include:

(A) The creation of a form to be used by a private family trust company for this purpose that requires the inclusion of the name of the private family trust company; an acknowledgment that any exemption granted by the banking board pursuant to section 11-109-1003 or otherwise applicable to the private family trust company will become inapplicable upon



the termination of the company's status as a private family trust company; and the name under which the company will transact business with the general public;

(B) The designation of a fee that the private family trust company shall be required to submit to the banking board upon submission of the form.

**Source:** **L. 2003:** Entire article added with relocations, p. 1064, § 3, effective July 1; (5.5) added, p. 1745, § 1, effective July 1. **L. 2007:** (6) amended, p. 596, § 3, effective July 1. **L. 2008:** (18) added, p. 1500, § 2, effective May 28. **L. 2009:** (6) amended, (HB 09-1053), ch. 159, p. 688, § 5, effective August 5.

**Editor's note:** (1) This section is similar to former § 11-2-103 as it existed prior to 2003.

(2) Section 11-2-103 (5.5) as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated to this section as subsection (5.5).

## ANNOTATION

**In extraordinary circumstances requiring immediate action,** the banking board is permitted to seize and liquidate a bank's assets without notice or hearing, provided that, upon application for rescission within ten days of such ac-

tion, it conducts a prompt hearing on the request for rescission. *First Bank v. Dept. of Regulatory Agencies*, 852 P.2d 1345 (Colo. App. 1993) (decided prior to 1989 repeal and reenactment of former § 11-2-103).

**11-102-105. Roles and authority of banking board and commissioner - rules - exercise of powers.** (1) All rules of the commissioner lawfully adopted prior to April 15, 1988, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) The banking board and the commissioner in the exercise of their powers pursuant to this code shall be guided by and shall act in a manner consistent with the policies of the state of Colorado with respect to state banks as set forth in section 11-101-102.

**Source:** **L. 2003:** Entire article added with relocations, p. 1066, § 3, effective July 1.

**Editor's note:** This section is similar to former §§ 11-2-103.5 and 11-2-107 as they existed prior to 2003.

**11-102-106. Nontraditional mortgages - consumer protections - rules - incorporation of federal interagency guidance.** The banking board shall adopt rules governing the marketing of nontraditional mortgages by banking institutions. In adopting such rules, the board shall incorporate appropriate provisions of the final "Interagency Guidance on Nontraditional Mortgage Product Risks" released on September 29, 2006, by the office of the comptroller of the currency and the office of thrift supervision in the federal department of the treasury, the board of governors of the federal reserve system, the federal deposit insurance corporation, and the national credit union administration, as such publication may be amended.

**Source:** **L. 2007:** Entire section added, p. 1745, § 1, effective July 1.

## PART 2

## PROCEEDINGS

**11-102-201. Hearing officers - powers - procedure - order final.** (1) The banking board has the power to designate a person to act as a hearing officer to conduct any public hearing authorized or required by this code except in the case of charter applications that have been timely protested pursuant to the rules of the banking board. The banking board may determine the qualifications required for a person to be designated pursuant to this subsection (1) based upon the education and experience required for the particular hearing.

Such person may, but need not be, an administrative law judge serving pursuant to section 24-30-1003, C.R.S.

(2) Any such hearing officer shall have the powers of a hearing officer prescribed in section 24-4-105, C.R.S.

(3) After the conclusion of a hearing, the hearing officer shall prepare written findings and recommendations based on the hearing and shall certify such findings and recommendations to the banking board and to each party. If the banking board does not affirm, modify, reverse, remand for further findings, or vacate such written recommendations within sixty days after receipt of the recommendations, the same shall be deemed the determination and order of the banking board. The banking board may extend such sixty-day period by no more than thirty additional days.

**Source: L. 2003:** Entire article added with relocations, p. 1067, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-103.6 as it existed prior to 2003.

**11-102-202. Subpoenas - witnesses - production of records.** (1) The commissioner, or the banking board, has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath, and examine any person under oath in connection with any subject relating to a duty imposed upon, or a power vested in, the commissioner or the banking board.

(2) In case of a refusal of any person to comply with a lawful subpoena or order of the commissioner or of the banking board issued pursuant to this section, upon proper petition by the commissioner or the banking board to the district court, the court shall require compliance therewith, and further refusal shall be punishable as contempt of court.

**Source: L. 2003:** Entire article added with relocations, p. 1067, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-104 as it existed prior to 2003.

**11-102-203. Effect of good faith reliance on orders or rules of banking board.** No person who in good faith relies on any order or rule of the banking board shall be subjected to any civil or criminal liability for any act or omission to act, notwithstanding a subsequent decision by a court invalidating any such order or rule.

**Source: L. 2003:** Entire article added with relocations, p. 1067, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-104.5 as it existed prior to 2003.

**11-102-203.5. Independent administrative review of material supervisory determinations - rules.** (1) The banking board shall establish by rule an independent administrative appeals process to address an adverse material supervisory determination that affects a state bank. For purposes of this section, a "material supervisory determination" means:

(a) An examination rating, including composite scores, information technology, and trust department ratings;

(b) A determination relating to the adequacy of loan loss reserve provisions;

(c) A disputed asset classification exceeding ten percent of the state bank's total capital;

(d) A determination relating to violations of law or regulation; and

(e) Any other determination that may have an effect on a state bank's capital, earnings, operating flexibility, or capital category for prompt corrective action purposes, or may otherwise affect the nature and level of supervisory oversight accorded the state bank.

(2) In promulgating the rule provided for in this section, the banking board shall apply the following criteria, considerations, and policies:

(a) The initial appeal shall be heard by one or more people selected by the banking board who did not participate in and does not report to anyone who made the material supervisory determination under review;



(b) The banking board shall establish safeguards to protect from retaliation a state bank that files an appeal;

(c) All appeals shall be in writing, on forms approved by the banking board, and approved by the appellant's governing principal or a majority of principals;

(d) All appeals shall be heard within ninety days after filing and decided within one hundred eighty days after filing;

(e) The banking board shall classify the state banks that are eligible to appeal;

(f) The banking board shall encourage informal resolution procedures;

(g) The banking board shall encourage coordination with other state and federal regulatory authorities; and

(h) To the extent that federal guidelines are consistent with this section, the banking board shall model the rule provided for in this section on relevant federal guidelines.

(3) Notwithstanding any other provision of this section, an appeal of an adverse material supervisory determination shall not affect, delay, or impede any formal or informal supervisory or enforcement action in progress.

**Source: L. 2004:** Entire section added, p. 22, § 4, effective March 3.

**11-102-204. Court review.** (1) Any person aggrieved and directly affected by an order of the banking board issued under this code may seek a review in the district court in and for the county in which the bank is located, or proposed bank is to be located, within thirty days after receipt of written notice of the issuance of said order; except that any person aggrieved or directly affected by an order of the banking board pursuant to section 11-103-304 granting or denying a charter for a new state bank may seek a review in the court of appeals and not the district court. Such review in the court of appeals shall be in accordance with section 24-4-106 (11), C.R.S. The validity of an order may be tested only by such a review and may not be placed in issue in an action to enforce it. The filing of such a petition for review shall not, of itself, stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

(2) The court may affirm the order of the banking board or may direct the banking board to take any action deemed proper. It may reverse or modify the order of the banking board if the order was issued pursuant to an unconstitutional statutory provision, was in excess of statutory authority, was issued upon unlawful procedure, or is not supported by substantial evidence in the record.

**Source: L. 2003:** Entire article added with relocations, p. 1067, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-105 as it existed prior to 2003.

## ANNOTATION

I. General Consideration.

II. Reviewing Court.

III. Scope of Review.

IV. Order of Reviewing Court.

V. Procedure.

### I. GENERAL CONSIDERATION.

**Annotator's note.** Since § 11-102-204 is similar to § 11-2-105 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**Applied** in *Monroe Indus. Bank v. Bloom*, 648 P.2d 686 (Colo. App. 1982).

### II. REVIEWING COURT.

**The commission's denial of an application is reviewable in a district court** as provided by this section. *Colo. Banking Bd. v. Finnigan*, 139 Colo. 92, 336 P.2d 98 (1959).

**No concurrent jurisdiction.** This section was not intended to confer concurrent jurisdiction between the district courts and court of appeals. *Nizel v. Banking Bd.*, 196 Colo. 98, 581 P.2d 306 (1978).

### III. SCOPE OF REVIEW.

**The state banking board may determine whether to grant bank charter** and has jurisdiction to hold hearings to that effect. The district courts cannot usurp this power. *Banking*

Bd. v. District Court, 177 Colo. 77, 492 P.2d 837 (1972).

**Board may use expertise which may not be disturbed by court.** Convenience is only one of the factors the state banking board was entitled to consider in determining whether the proposed bank would serve a "public need and advantage" in the area. Other factors, such as the already highly competitive nature of banking in the area, outweighed the convenience factor. It was within the board's competence, applying its expertise, to make this determination, and it should not be disturbed on review. *Goldy v. Henry*, 166 Colo. 401, 443 P.2d 994 (1968).

**Court cannot affirm board's order which exceeds statutory tolerances.** Where the business location of a proposed bank as described in the banking board's order exceeds the statutory tolerance and does not conform to the proposed location which was specified in the notice of hearing, the conclusion of law made by the district court that the banking board's order was valid insofar as it described the possible location of the proposed bank was in error, and that portion of the district court's judgment would be reversed. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Court cannot disregard all evidence given to board by interested parties.** In reversing the state banking board, the reviewing court disregarded virtually all of the evidence presented by the protesting banks, on the ground that only one of their witnesses was "neutral" or disinterested. Most of the applicants' witnesses were as interested as the protestants' witnesses. The fact that these witnesses had an interest in the outcome of the hearing may affect the weight to be given their opinions, but it does not require the board to assume that these witnesses were not telling the truth when they testified as to factual matters. *Goldy v. Henry*, 166 Colo. 401, 443 P.2d 994 (1968).

**It is up to the board to weigh evidence.** The weighing and evaluation of the testimony and evidence offered as to an application for a charter is the statutorily delegated power and responsibility of the banking board, and it is beyond the power of a reviewing court to substitute its judgment for that of the fact-finding authority. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**It is also the board's duty to determine the credibility of witnesses.** The credibility of witnesses as well as the weight of the testimony are peculiarly within the province of the board to whom a statute entrusts the fact-finding process. When a conflict in the evidence exists, it is not within the power of a reviewing court to substitute its judgment for that of a fact-finding au-

thority as to the weight of the evidence and the credibility of witnesses. *Goldy v. Henry*, 166 Colo. 401, 443 P.2d 994 (1968).

#### IV. ORDER OF REVIEWING COURT.

**Reviewing court may modify board's order if basis for modification is on the record.** Where the basis for modification of the banking board's order appears in the record, the court may modify and correct that order on appeal. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**This section provides that the reviewing court may affirm the order of the board,** direct the taking of any action deemed proper, or may reverse or modify the order of the banking board if it is not supported by substantial evidence in the record. *Banking Bd. v. Holyoke Indus. Bank*, 152 Colo. 489, 383 P.2d 318 (1963).

**There was substantial evidence supporting the banking board's finding of extraordinary circumstances** where examinations of the bank over a period of five months revealed a continuing deterioration of its financial status, a negative capital assessment which continued to worsen over time, a failure of the bank to comply with the banking board's order to levy an assessment, the insolvency of one of the bank's major shareholders, and the bank's inability to demonstrate the ability to secure an investor or otherwise inject the necessary capital in the immediate future. *First Bank v. Dept. of Regulatory Agencies*, 852 P.2d 1345 (Colo. App. 1993) (decided prior to 1989 repeal and reenactment).

#### V. PROCEDURE.

**Extent to which court of appeals governed by rules of civil procedure.** Under this section, judicial proceedings to review the banking board determinations originate in the court of appeals. Therefore, to the extent that appellate rules are inadequate in this situation, the court of appeals is governed by the Colorado rules of civil procedure. *Columbine State Bank v. Banking Bd.*, 34 Colo. App. 11, 523 P.2d 474 (1974).

**Failure to join indispensable parties within statutory time for appeal is fatal defect.** In an action in district courts to review administrative proceedings, failure to join indispensable parties prior to the expiration of the statutory time for appeal is a fatal defect which deprives the court of jurisdiction to entertain the action. *Columbine State Bank v. Banking Bd.*, 34 Colo. App. 11, 523 P.2d 474 (1974).



## PART 3

## RECORDS, REPORTING, AND INFORMATION

**11-102-301. Examinations and examiner's reports.** (1) The commissioner shall examine the books and records of every state bank as often as deemed advisable and to the extent required by the banking board, shall make and file in his or her office a correct report in detail disclosing the results of such examination, and shall mail a copy of such report to the bank examined.

(2) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of a state bank or any electronic data processing centers that serve a state bank, without regard to the location of the electronic data processing center; shall make and file in his or her office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the state bank that they serve.

(3) (a) The commissioner, if he or she deems it necessary or if required by the banking board, may examine the books and records of the controlling shareholder of a state bank and any affiliated entities of the controlling shareholder, as well as any relationship among the controlling shareholder and its affiliated entities, for the purpose of determining the safety and soundness of the state bank.

(b) If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine the records at the place where they are located.

(c) The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

(d) If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one thousand dollars for each day any such refusal continues.

(e) In lieu of any examination required by this subsection (3), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs of the audit shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(f) For purposes of this subsection (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder or an entity controlled by a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of a state bank.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as is set forth in section 11-102-303 for acquiring control of a state bank.

(4) If the commissioner deems necessary, the commissioner may examine any corporation the majority of the stock of which is owned by a state bank or which corporation is found by the banking board to be controlled by a state bank, but the provisions of this subsection (4) shall not apply when such stock is held in a fiduciary capacity by the bank.

(5) If the banking board finds any officer, director, or employee of any state bank to be dishonest, reckless, incompetent, or acting in violation of this code, it shall, in writing, report the facts regarding such officer, director, or employee to the board of directors of the state bank, and, if the directors of the state bank fail or refuse to take action on such report within ten days, the banking board may, if it deems it advisable, send a copy of such report to the surety on the bond of said officer.

**Source: L. 2003:** Entire article added with relocations, p. 1068, § 3, effective July 1.  
**L. 2004:** (3)(a) and (3)(f)(I) amended, p. 323, § 4, effective April 7.

**Editor's note:** This section is similar to former § 11-2-108 as it existed prior to 2003.

**11-102-302. Bank reports to banking board - generally.** (1) Every state bank shall make and file with the banking board not less than three reports during each calendar year according to the form that may be prescribed by the banking board, verified by the oath of either the president, the vice-president, the cashier, or the secretary and attested by the signature of three or more of the directors. Each such report shall exhibit in detail, as may be required by the banking board, the resources and liabilities of the state bank at the close of business on the date specified by the banking board.

(2) Said reports shall be transmitted to the banking board within thirty days after its request.

(3) The banking board has power to call for special reports from any particular state bank if, in the banking board's judgment, the special reports are necessary to establish a full and complete knowledge of the state bank's condition. No such special report, nor any summary of a special report, shall be required to be published. The reports required by, and filed pursuant to, this section shall be in lieu of all others required by law from state banks. Every state bank that fails to comply with this section shall pay to the banking board a penalty in an amount set by the banking board pursuant to section 11-102-104 (11). The banking board, for valid reasons and good cause, may waive such penalty.

**Source: L. 2003:** Entire article added with relocations, p. 1069, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-109 as it existed prior to 2003.

#### ANNOTATION

**Loan omitted from report to deceive commissioner is void.** Where a bank failed to report or publish a certain bank loan as required by this section and had it done so the commissioner would have closed the bank, the evident purpose of the loan then was to deceive the commis-

sioner in his performance of an official duty. Such contracts are contrary to public policy and void. *Walther v. McFerson*, 92 Colo. 314, 20 P.2d 552 (1933) (decided under repealed laws antecedent to CSA, C. 18, § 22, which were similar to this section).

**11-102-303. Bank reports to banking board - requirements for acquiring control.**

(1) As used in this section, unless the context otherwise requires:

(a) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.

(b) "Controlling person" means a person who is in control of a state bank or would be in control of a state bank after a proposed acquisition.

(2) A person shall be deemed to have acquired control of a state bank if, as a result of acquisition, such person:

(a) Directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

(b) Controls in any manner the election of a majority of the directors thereof; or

(c) Exercises a controlling influence over the management or policies thereof.

(3) (a) Whenever a person proposes to acquire control of any state bank, such person shall first make application to the banking board for approval. Without approval from the banking board pursuant to subsection (4) of this section, a person shall be prohibited from making such an acquisition.

(b) An application required by paragraph (a) of this subsection (3) shall contain the following information to the extent that it is known by the person making the application:

(I) The number of shares involved;

(II) The name of each seller or transferor;

(III) The name of each purchaser or transferee;

(IV) The name of each beneficial owner if the share or shares are registered in another name;

(V) The purchase price;

(VI) Detailed information concerning any loans made in connection with the acquisition;



(VII) Such other information concerning the transaction as may be required by the banking board regarding the effect of the transaction upon the control of the state bank involved;

(VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

(IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

(4) (a) After receipt of an application, the commissioner shall make an investigation, and the banking board shall approve the change of control only after the banking board has determined:

(I) That the person proposing to acquire control is qualified by character, experience, and financial responsibility to control the state bank in a legal and proper manner;

(II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

(III) That the person proposing to acquire control has satisfied the requirements of subsections (1) to (7) of this section and the other provisions of articles 101 to 109 of this title.

(b) The general assembly declares that the acquisition of control of, or of any ownership interest in, state banks by persons owned or controlled by a country with which it has been determined to be against the national interest to trade without export controls for national security purposes by the president of the United States or another appropriate agency of the federal government as directed by the president pursuant to the "Export Administration Act of 1979", 50 U.S.C. Appendix sec. 2401 et seq., the "International Emergency Economic Powers Act", 50 U.S.C. sec. 1701 et seq., or any rule, order, or decision promulgated in connection therewith, is against the public interest. If the application or the commissioner's investigation indicates that any person seeking to have control of or any ownership interest in a state bank is owned or controlled by such a country, the banking board shall not approve any such change of control.

(5) This section shall not apply to the acquisition of:

(a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting, in whole or in part, a debt contracted in good faith or stock acquired through testate or intestate succession or bona fide gift, if the acquirer advises the banking board of such acquisition within thirty days after the acquisition and provides any information required or requested by the banking board or commissioner;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale of the shares; or

(e) Pro rata stock dividends.

(6) If the banking board has not acted upon a completed application within sixty days after receipt thereof, unless extended for an additional thirty days by the banking board, such application shall be considered approved.

(7) Whenever any person proposes to acquire control of any state bank and is required by the "Change in Bank Control Act of 1978" (section 7 (j) of the "Federal Deposit Insurance Act", 12 U.S.C. 1817 (j)), as such act may be amended from time to time, to give the appropriate federal banking agency prior written notice of such proposed acquisition, a copy of such notice with supporting information shall be given concurrently to the banking board for information. The banking board may use such information in evaluating applications submitted pursuant to this section and shall submit its recommendations and comments to the appropriate federal regulatory authority in a timely manner.

(8) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of a state bank shall within ninety days thereafter file a report with the banking board containing: A statement

describing any civil or criminal offenses affecting such person's qualification to serve in such capacity with respect to which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency; such biographical information as the banking board requires; and such other information as the banking board requires pursuant to its rules. If any statement contained in such report subsequently becomes inaccurate or misleading in any way, such person shall file an amended report within thirty days after the date on which the statement in the report first becomes inaccurate or misleading. Any person who fails to comply with this subsection (8) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which penalty shall not exceed twenty-five dollars per day, and such penalty shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(9) If any state bank changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the state bank, such changes shall be promptly reported to the banking board, and the state bank shall provide such information concerning such person as may be requested by the banking board on such forms as the banking board may require, including information about the reasons for termination from any prior employment and whether such person was charged or convicted of any civil or criminal offenses enumerated in subsection (8) of this section. No civil liability shall arise for any state bank, its directors, executive officers, employees, or agents, or other persons due to compliance with the requirements of this subsection (9). The purpose of such information is to inform the banking board of the qualifications of such person as they may affect the safety and soundness of the state bank. The information shall be treated as confidential under this code. Any bank that fails to comply with this subsection (9) shall be required to pay a penalty in an amount set by the banking board by rule, which penalty shall not exceed twenty-five dollars per day, and such penalty shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

**Source: L. 2003:** Entire article added with relocations, p. 1070, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-109 as it existed prior to 2003.

**11-102-304. Commissioner's annual report - publications.** For each calendar year, the commissioner shall compile and publish an annual report in such form and containing such information as the commissioner may determine necessary to reasonably summarize the operations of the division during such year.

**Source: L. 2003:** Entire article added with relocations, p. 1073, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-110 as it existed prior to 2003.

**11-102-305. Records.** (1) (a) Information from the records of the division shall be revealed only to members of the banking board, except as follows:

(I) Information may be disclosed if such disclosure is rendered necessary by law.

(II) Any party entitled to appear in a hearing on an application for bank charter shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws.

(III) The commissioner may exchange information as to the condition of banks with the United States comptroller of the currency, banking departments of other states, the federal reserve system and its examiners, and the federal deposit insurance corporation and its examiners.

(IV) The commissioner may exchange information obtained from money transmitters with the United States secretary of the treasury, the secretary's designees, the United States attorney general, or the attorney general's designee pertaining to compliance with federal money laundering and other financial crimes laws, including, but not limited to, the "Bank



Secrecy Act”, the “Right to Financial Privacy Act of 1978”, the “Money Laundering Control Act of 1986”, and the “Annunzio-Wylie Anti-Money Laundering Act”.

(V) The commissioner may exchange information as provided by part 2 of article 52 of title 12, C.R.S.

(b) Notwithstanding any other provision of articles 101 to 109 of this title to the contrary, the commissioner, the commissioner’s deputies, and the members of the banking board may disclose any information in the records of the division or acquired by them in the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system or the disclosure of which has been specifically authorized by the board of directors of the financial institution to which such information relates.

(2) Reports of examinations made by the division shall be retained by the division for seven years.

(3) Upon request and upon payment of such reasonable charges as the commissioner shall prescribe, the commissioner shall furnish to any person a certified copy of any document on file with the division that is a public record. Such certified copy shall be admissible in evidence in lieu of the original and shall constitute prima facie evidence of the contents of the original.

(4) The division or the commissioner may inform a licensing agency within the department of regulatory agencies of possible misconduct by a person or entity licensed by said agency, notwithstanding that the division or commissioner learned of the alleged misconduct while discharging their duties under the code. The division and the commissioner may give the licensing agency records or information in their possession relating to the licensee’s alleged misconduct.

**Source:** L. 2003: Entire article added with relocations, p. 1073, § 3, effective July 1. L. 2007: (1) amended, p. 354, § 1, effective April 2. L. 2008: (4) added, p. 181, § 3, effective August 5. L. 2010: (1)(a)(IV) amended and (1)(a)(V) added, (HB 10-1114), ch. 192, p. 823, § 1, effective July 1.

**Editor’s note:** This section is similar to former § 11-2-111 as it existed prior to 2003.

**Cross references:** For the “Bank Secrecy Act”, see Pub.L. 91-508, codified at 31 U.S.C. § 5311 et seq.; for the “Money Laundering Control Act of 1986”, see Title I, subtitle H, §§ 1351-1367 of Pub.L. 99-570; for the “Annunzio-Wylie Anti-Money Laundering Act”, see Title XV of Pub.L. 102-550.

**11-102-306. Information confidential.** (1) The banking board, the commissioner, and all deputies and employees of the division shall not divulge any information acquired by them in the discharge of their duties except insofar as disclosure may be rendered necessary or authorized by law, including section 11-102-305 (4).

(2) The banking board, the commissioner, and their designees may exchange information with the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the federal home loan bank in which an institution is a member or is making an application to become a member, the executive director of the department of regulatory agencies, the division of financial services, and banking regulatory agencies of other states, subject to any confidentiality agreement entered into between the banking board or the commissioner and the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, or the federal home loan bank in which an institution is a member or is making an application to become a member. In addition, the banking board, the commissioner, and their designees may exchange information obtained by the banking board relating to:

(a) Possible violations of the federal “Employee Retirement Income Security Act of 1974”, 29 U.S.C. sec. 1001 et seq., with the federal department of labor or the executive director of the department of regulatory agencies;

(b) Possible criminal violations of federal law relating to the activities of a federally insured institution with the federal bureau of investigation or the executive director of the department of regulatory agencies; and

(c) The activities of money transmitters and foreign capital depositories pertaining to compliance with federal money laundering and other financial crimes laws, including, but not limited to, the "Bank Secrecy Act", the "Right to Financial Privacy Act of 1978", the "Money Laundering Control Act of 1986", and the "Annunzio-Wylie Anti-Money Laundering Act", with the United States secretary of the treasury or the secretary's designees.

(3) The executive director of the department of regulatory agencies and the state commissioner of financial services and their deputies shall, before entering upon the discharge of their duties specified in this section, in addition to an oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of such duties, except as may otherwise be required by law. Willful violation of this oath shall be a criminal offense.

(4) Notwithstanding any other provision of this article to the contrary, the commissioner, the deputies, and the members of the banking board may disclose any information in the records of the division of banking or acquired by them within the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system and disclose information that has been specifically authorized by the board of directors of the bank to which such information relates. Nothing in this section shall be construed to authorize the board of directors of a bank to waive any privileges that belong solely to the banking board, the division, or its employees.

**Source:** **L. 2003:** Entire article added with relocations, p. 1073, § 3, effective July 1. **L. 2007:** Entire section amended, p. 355, § 2, effective April 2; entire section amended, p. 596, § 7, effective July 1. **L. 2008:** (1) amended, p. 181, § 4, effective August 5.

**Editor's note:** (1) This section is similar to former § 11-2-111.5 as it existed prior to 2003.

(2) Amendments to this section by Senate Bill 07-101 and House Bill 07-1035 were harmonized.

**Cross references:** For the "Bank Secrecy Act", see Pub.L. 91-508, codified at 31 U.S.C. § 5311 et seq.; for the "Right to Financial Privacy Act of 1978", see Title XI of Pub.L. 95-630, codified at 12 U.S.C. § 3401 et seq.; for the "Money Laundering Control Act of 1986", see Title I, subtitle H, §§ 1351-1367 of Pub.L. 99-570; for the "Annunzio-Wylie Anti-Money Laundering Act", see Title XV of Pub.L. 102-550.

**11-102-307. Access to records.** The commissioner shall have access to any record of the division relating to state banks, and the appointive members of the banking board shall have such access upon the affirmative vote of a majority of the members of the banking board.

**Source:** **L. 2003:** Entire article added with relocations, p. 1074, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-112 as it existed prior to 2003.

**11-102-308. Bank records - preservation - reproduction.** (1) Every state bank shall retain its business records for such periods as are prescribed by or in accordance with the terms of this section.

(2) Each state bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger (or the record kept by the bank in lieu thereof), its daily statements of condition, and all records that the banking board shall, in accordance with the terms of this section, require to be retained permanently.

(3) All other state bank records shall be retained for such periods as the banking board shall, in accordance with the terms of this section, prescribe.



(4) The banking board shall from time to time issue rules classifying all records kept by state banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a term of years. Such rules may be amended or repealed. Prior to issuing any such rule, the banking board shall consider:

(a) Actions and administrative proceedings in which the production of bank records might be necessary or desirable;

(b) State and federal statutes of limitation applicable to such actions or proceedings;

(c) The availability of information contained in bank records from other sources;

(d) Such other matters as the banking board deems pertinent in order that its rules will require banks to retain their records for such periods as are commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.

(5) Any state bank may dispose of any record that has been retained for the period prescribed, in accordance with the terms of this section for retention of records of its class, and shall, after it has disposed of a record, thereafter be under no duty to produce such record in any action or proceeding.

(6) In lieu of retention of the original records, any state bank may cause any of its records and records at any time in its custody, including those held by it as a fiduciary, to be photographed or otherwise reproduced in permanent form. Any such photograph or reproduction shall have the same force and effect as the original and be admitted in evidence equally with the original.

(7) To the extent that they are not in contravention of any statute of the United States or any rule promulgated thereunder, the provisions of this section shall apply to all banks doing business in this state.

**Source: L. 2003:** Entire article added with relocations, p. 1074, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-113 as it existed prior to 2003.

#### PART 4

#### ASSESSMENTS AND FEES

**11-102-401. Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section 11-102-104 (11). Assessments may be made more frequently than annually at the discretion of the banking board.

(2) For the fiscal year beginning July 1, 2003, and for each fiscal year thereafter, the banking board shall establish an assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division of banking for each such fiscal year.

**Source: L. 2003:** Entire article added with relocations, p. 1075, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-114 as it existed prior to 2003.

**11-102-402. Administrative fees.** (1) The banking board shall assess filing fees to banks and bank holding companies outside of Colorado that are seeking to acquire a bank or bank holding company in Colorado in such amount as determined to be sufficient to reimburse the state for the cost of administration of sections 11-104-202 (8) and (9) and 11-104-203 and the requirements thereof.

(2) No moneys collected pursuant to this section shall be expended except upon appropriation by the general assembly.

**Source: L. 2003:** Entire article added with relocations, p. 1075, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-114.1 as it existed prior to 2003.

**11-102-403. Division of banking cash fund - creation.** All fees and assessments collected by the banking board shall be transmitted to the state treasurer, who shall credit the same to the division of banking cash fund, which fund is hereby created in the state treasury. All moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs of the activities of the banking board and the division. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

**Source: L. 2003:** Entire article added with relocations, p. 1076, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-114.5 as it existed prior to 2003.

## PART 5

### CONFLICTS OF INTEREST, PENALTIES, REMOVAL, SUSPENSION, ENFORCEMENT

**11-102-501. Banking interests of officers and employees.** No officer or employee of the division shall be an officer, director, attorney, owner, or shareholder in any bank, or, except as provided in this article, receive, directly or indirectly, any payment or gratuity from any such bank, or be indebted to any bank or other institution over which the division has supervisory control. Willful violation of this section is declared to be a criminal offense. This section shall not prohibit being a depositor or the lessee of a safe deposit box on the same terms as are available to the public generally, or being indebted to a bank: Upon a mortgage loan upon the mortgagor's own home, or upon an installment debt transferred to a bank in the regular course of business by a seller of consumer goods including automobiles purchased by the officer or employee. Further, this section shall not prohibit the four banker members of the banking board, provided for in section 11-102-103 (2) (a), from being executive officers in banks and from receiving bona fide compensation as such officers.

**Source: L. 2003:** Entire article added with relocations, p. 1076, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-115 as it existed prior to 2003.

**11-102-502. Exemption from liability - when.** No member of the banking board or officer or employee of the division shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

**Source: L. 2003:** Entire article added with relocations, p. 1076, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-116 as it existed prior to 2003.

## ANNOTATION

**Annotator's note.** Since § 11-102-502 is similar to § 11-2-116 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**A bank is under a duty not to disclose the financial condition of its customers and depositors.** *Rubenstein v. S. Denver Nat. Bank*, 762 P.2d 755 (Colo. App. 1988).

**11-102-503. Assessment of civil money penalties by banking board.** (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar



action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease-and-desist order issued by the banking board pursuant to section 11-102-104 (7); and

(B) Any state bank that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who, violates or knowingly permits any person to violate any of the provisions of this code or any rule promulgated pursuant to this code, or engages or participates in any unsafe or unsound practice in connection with a bank. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under section 11-102-401; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement that contains materially false or misleading information.

(II) The banking board may, in extraordinary circumstances, at its option, and upon waiver of the right to a public hearing by a respondent, close to the public any hearing concerning an assessment of a civil money penalty, an order of suspension or removal from office, an order to cease and desist from any unlawful or unsafe and unsound practices, or any other formal enforcement action by the banking board. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from or the safety and soundness of the institution.

(b) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty shall constitute a final order for purposes of judicial review pursuant to section 24-4-106, C.R.S.

(3) The banking board shall have authority to determine the amount of any civil money penalty assessed against any executive officer, director, employee, agent, or other person participating in the affairs of a bank, except as expressly limited by this code. In determining the amount of the civil money penalty to be assessed, the banking board shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, the nature and extent of any past violations, and such other matters as the banking board may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed remains in violation.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the banking board; except that the banking board may, in its discretion, compromise, modify, or set aside any civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

**Source: L. 2003:** Entire article added with relocations, p. 1076, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-117 as it existed prior to 2003.

**11-102-504. No indemnification or insurance against civil money penalties.** Notwithstanding any other provision of law, no state bank shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such bank against civil money penalties.

**Source: L. 2003:** Entire article added with relocations, p. 1078, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-118 as it existed prior to 2003.

**11-102-505. Removal of director, officer, or other person.** (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank with a written notice of its intention to remove such person from office whenever the banking board determines:

(a) That any such person has committed any violation of this code, rule of the banking board, or cease-and-desist order of the banking board that has become final; has engaged or participated in any unsafe or unsound practice in connection with a bank; has committed or engaged in any act, omission, or practice that constitutes a breach of fiduciary duty to the state bank; or has been found liable for or guilty of any of the civil or criminal offenses enumerated in section 11-102-303 (8); and

(b) (I) That the state bank has suffered or probably will suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation, practice, breach of fiduciary duty, or offense; or

(II) That such person has received financial gain by reason of such violation, practice, breach of fiduciary duty, offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one that demonstrates a willful or continuing disregard for the safety or soundness of the state bank.

(2) Whenever the banking board determines that an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a state bank, by conduct or practice with respect to another bank or business institution that results in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for such state bank's safety and soundness, and, in addition, has evidenced unfitness to continue such person's relationship with the state bank, the banking board may serve upon such person a written notice of its intention to remove him or her from office or to prohibit the person's further participation in any manner in the conduct of the affairs of the state bank.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit such person's participation in the conduct of the affairs of a state bank shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing shall be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the banking board at the request of such director or executive officer or other person, and for good cause shown. Unless such director, executive officer, or other person appears at the hearing in person or by a duly authorized representative, such person shall be deemed to have consented to the issuance of an order of removal or prohibition as specified in the notice issued pursuant to subsection (1) or (2) of this section. In the event of such consent or, if, upon the record made at any such hearing, the banking board finds that any of the grounds specified in such notice have been established, the banking board may issue such orders of suspension or removal from office as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, executive officer, or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the banking board or a reviewing court.

**Source: L. 2003:** Entire article added with relocations, p. 1078, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-119 as it existed prior to 2003.

**11-102-506. Suspension of director, officer, or other person.** (1) The banking board may suspend an executive officer, director, employee, agent, or other person participating



in the conduct of the affairs of a state bank who becomes ineligible to hold such position, or who after receipt of an order of the banking board to cease and desist violates this code or a lawful rule or order issued pursuant thereto, or who is dishonest, or who is reckless or grossly incompetent in the conduct of banking business, or who may be subject to removal under section 11-102-505. It shall be a criminal offense for any such person, after receipt of a suspension order, to perform any duty or exercise any power of any state bank until the banking board vacates such suspension order. A suspension order shall specify the grounds thereof. A copy of the order shall be sent to the bank concerned and to each member of its board of directors.

(2) With respect to any action pursuant to this section, ten days' notice, by certified mail, return receipt requested, and an opportunity for hearing shall be provided to the bank affected, in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice or hearing, but shall promptly afford a subsequent opportunity for hearing, upon application to rescind the action taken.

**Source: L. 2003:** Entire article added with relocations, p. 1079, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-120 as it existed prior to 2003.

**11-102-507. Informal enforcement authority.** The banking board, or the commissioner if so authorized by the banking board, shall have authority to initiate informal actions to enforce the provisions of this code. In this regard the banking board or the commissioner may, in the banking board's or the commissioner's discretion, enter into written agreements such as a memorandum of understanding with, or an informal commitment letter from, or strongly worded letter of reprimand to any bank or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank.

**Source: L. 2003:** Entire article added with relocations, p. 1079, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-121 as it existed prior to 2003.

**11-102-508. Statements derogatory to state banks - penalty.** Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, that is directly or by inference derogatory to the financial condition of any state bank and that results in an extraordinary withdrawal of funds from such bank or that results in impairing public confidence in such bank and any person who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement knowing the statement to be false commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source: L. 2003:** Entire article added with relocations, p. 1079, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-2-122 as it existed prior to 2003.

## ARTICLE 103

### Organization and Corporate Functions

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

## PART 1

## GENERAL CORPORATE POWERS

11-103-602.

- 11-103-101. General corporate powers.  
 11-103-102. Trust, fiduciary, and agency powers - when authorized.  
 11-103-103. State bank organized as a limited liability company.

## PART 2

## CAPITAL REQUIREMENTS

- 11-103-201. Capital.  
 11-103-202. Inadequacy of capital - assessments.  
 11-103-203. Liability of shareholders.

## PART 3

## CHARTERING A STATE BANK

- 11-103-301. Incorporators.  
 11-103-302. Application fees.  
 11-103-303. Application for charter.  
 11-103-304. Procedure for granting or denying charter.

## PART 4

## SHARES AND DISTRIBUTIONS

- 11-103-401. Subscription calls.  
 11-103-402. First meetings of stockholders - director's oath - bylaws.  
 11-103-403. Stockholders' meetings - voting trusts - preemptive right - transfer of stock.  
 11-103-404. Waiver of notice - meeting or vote.  
 11-103-405. Amendment of articles - change of location - authorized but unissued stock.  
 11-103-406. Dividends - when payable.

## PART 5

## DIRECTORS AND OFFICERS

- 11-103-501. Directors and officers.  
 11-103-502. Directors' meetings - duties.  
 11-103-503. Waiver of notice - meeting or vote.

## PART 6

## INDEMNIFICATION AND INSURANCE

- 11-103-601. Director and officer insurance

and fidelity bonds - legislative declaration.

Indemnification and personal liability of directors, officers, employees, and agents.  
 Deposit insurance - membership in federal reserve system - federal national mortgage association.

## PART 7

MERGER, CONSOLIDATION,  
CONVERSION, AND SALE OF ASSETS

- 11-103-701. Merger or conversion.  
 11-103-702. Approval of merger by directors.  
 11-103-703. Approval by banking board.  
 11-103-704. Approval by stockholders - rights of dissenters.  
 11-103-705. Effective date of merger - certificate.  
 11-103-706. Continuation of corporate entity.  
 11-103-707. Conversion from state bank to national and vice versa.  
 11-103-708. Nonconforming assets.  
 11-103-709. Sale of all assets of bank or department.

## PART 8

LIQUIDATION, DISSOLUTION, AND  
REORGANIZATION

- 11-103-801. Voluntary liquidation and dissolution.  
 11-103-802. Involuntary liquidation by banking board - reorganization.  
 11-103-803. Reorganization plan.  
 11-103-804. Liquidation by commissioner - procedure.  
 11-103-805. Federal deposit insurance corporation or successor as liquidator.  
 11-103-806. Assets sold or pledged as security.  
 11-103-807. Enforcement of directors' liability.  
 11-103-808. Emergency grant of new charter.  
 11-103-809. Emergency grant of branch facility - legislative declaration.  
 11-103-810. Preapproved shelf charter.



## PART 1

## GENERAL CORPORATE POWERS

**11-103-101. General corporate powers.** (1) A state bank may be organized to exercise the powers provided in this code.

(2) Subject to the provisions of section 11-103-102, a state bank organized under the laws of this state shall, without specific mention thereof in its charter, have all the powers conferred by this code and the following additional general corporate powers:

- (a) To continue perpetually as a corporation;
- (b) To make contracts;
- (c) To sue and be sued, complain, and defend in its corporate name;
- (d) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced;
- (e) To make, alter, amend, and repeal bylaws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation;
- (f) To elect, appoint, or remove officers and agents of the bank and to define their duties and fix their compensation;
- (g) To adopt and operate reasonable bonus, profit-sharing, and pension plans for officers and employees;
- (h) To grant, subject to approval of the banking board, and by vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders, options to purchase, sell, or enter into agreements to sell shares of its capital stock to its employees, whether or not such transactions qualify for special tax treatment under the "Internal Revenue Code", as amended, and rules promulgated thereunder.

(3) A state bank, organized under the laws of this state, if so provided in its charter, has the general corporate power to eliminate or limit the personal liability of a director to the corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for: Any breach of the director's duty of loyalty to the corporation or its stockholders, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(4) A state bank, organized under the laws of this state, without specific mention in its charter, shall also have the power, in addition to all other powers, to make contributions to, or for the use or benefit of, the following:

(a) The United States, any state, territory, or political subdivision thereof, the District of Columbia, or any possession of the United States for exclusively public purposes;

(b) A corporation, foundation, trust, community chest, or other organization created or organized in the United States, or in any state or territory, or the District of Columbia, or any possession of the United States, and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, civic enterprise, or literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or

(c) Other lawful expenditures, contributions, and donations to the extent authorized, approved, or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, its bylaws, or resolution duly adopted by its stockholders.

(5) A state bank organized under the laws of this state, without specific mention in its charter, shall also have the power to act as escrow agent.

(6) If the name of a state bank organized under the laws of this state contains the word “bank”, said bank need not comply with the requirements of part 6 of article 90 of title 7, C.R.S.

(7) No state bank shall commit itself, either directly or indirectly, to undertake the responsibility for the tax liability of its shareholders or members.

**Source:** L. 2003: Entire article added with relocations, p. 1080, § 3, effective July 1; (7) added, p. 1747, § 3, effective July 1.

**Editor’s note:** (1) This section is similar to former § 11-3-101 as it existed prior to 2003.

(2) Subsection (7) was originally numbered as § 11-3-101 (6), and the amendments to it in House Bill 03-1106 were harmonized with House Bill 03-1257 and relocated to this section.

#### ANNOTATION

**Law reviews.** For article, “1988 Update on “Corporate Director Liability”, see 65 Den. U. Colorado Tort Reform Legislation — Part II”, L. Rev. 59 (1988). For article, see 17 Colo. Law. 1949 (1988).

**11-103-102. Trust, fiduciary, and agency powers - when authorized.** In addition to its other powers, a state bank that is authorized by its charter to exercise trust powers, upon proper qualification under this code, has the power to act as a fiduciary in any capacity. It may also act as registrar, transfer agent, fiscal agent, or attorney-in-fact and have the power to receive, manage, and apply sinking funds. Every state bank that is authorized by its charter to exercise trust powers pursuant to this section shall make and file with the commissioner an annual report of trust assets and such other reports as the banking board may require by rule, on such forms as may be prescribed by the banking board. No report filed pursuant to this section shall be required to be published.

**Source:** L. 2003: Entire article added with relocations, p. 1081, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-3-102 as it existed prior to 2003.

**11-103-103. State bank organized as a limited liability company.** (1) Pursuant to section 11-102-104 (5.5) (a), a state bank charter may be issued to a limited liability company that otherwise meets the requirements of this code.

(2) A state bank organized as a limited liability company shall not be required to exist in perpetuity; except that the articles of organization of such a state bank shall provide for a method to extend the existence of the state bank in the event that termination occurs. In addition, the articles of organization of such a state bank shall require that liquidation of the limited liability company conform with the requirements of this code.

(3) Upon approval of the banking board, a state bank organized as a limited liability company may be merged with or converted into another entity regardless of the form of the surviving entity, so long as the surviving entity satisfies the requirements of this code.

(4) Upon approval of the banking board, a state bank organized as a corporation may be merged with or converted into a limited liability company, so long as it satisfies the requirements of this code.

(5) (a) A state bank organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the bank and the conduct of its business as may be agreed upon by the members and which provisions are consistent with this code and the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S.

(b) A copy of the written operating agreement shall be filed with the banking board prior to the granting of a charter to the state bank, and any amendments to the operating agreement shall be filed with and approved by the banking board prior to adoption.

(c) The banking board may promulgate rules establishing additional requirements relating to operating agreements to implement the provisions of this section.



(6) All distributions made by a state bank organized as a limited liability company to its members shall be subject to the requirements applicable to dividends issued by a state bank organized as a corporation under this code and the rules of the banking board.

(7) For purposes of implementing this section, the following definition constructions shall apply:

(a) Where this code refers to “articles of incorporation”, that term shall be construed to apply to a limited liability company’s articles of organization, as that term is defined in section 7-80-102 (1), C.R.S.;

(b) Where this code refers to “bylaws”, that term shall be construed to apply to a limited liability company’s operating agreement, as that term is defined in section 7-80-102 (11), C.R.S.;

(c) Where this code refers to “common stock” or “shares” of a state bank, such terms shall be construed to apply to a limited liability company’s membership interests;

(d) Where this code refers to a “corporation”, such term shall be construed to include a limited liability company organized under the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S., which limited liability company conforms to this section and the requirements established by the banking board pursuant to section 11-102-104 (5.5);

(e) Where this code refers to a “director” or a “board of directors” of a state bank, such terms shall be construed to apply to a manager or the managers of a limited liability company;

(f) Where this code refers to an “incorporator”, such term shall be construed to apply to the organizers of a limited liability company;

(g) Where this code refers to a “shareholder” or a “stockholder” of a state bank, such terms shall be construed to apply to a member of a limited liability company.

**Source: L. 2003:** Entire section added, p. 1746, § 2, effective July 1.

**Editor’s note:** Section 11-3-101.5 as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated as § 11-103-103.

## PART 2

### CAPITAL REQUIREMENTS

**11-103-201. Capital.** The banking board shall establish by rule the capital standards and guidelines, the methods for measuring capital, and the definitions of “capital”, “capital adequacy”, “capital inadequacy”, and other related terms for banks subject to this code, that may differ for specific purposes. In promulgating such rules, the banking board shall consider all relevant factors, including, without limitation, the policies set forth in section 11-101-102 and relevant federal laws and rules. Each bank subject to this code shall at all times comply with the capital rules promulgated by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1081, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-3-103 as it existed prior to 2003.

**11-103-202. Inadequacy of capital - assessments.** (1) If the banking board has reason to believe that the capital of any bank is inadequate under the rules of the banking board, the banking board may ascertain the facts and furnish the bank with a copy of its determination. If the banking board determines an inadequacy of capital based upon such determination, the commissioner, with the approval of the banking board, may direct the state bank to levy an assessment in a designated amount upon the holders of record of common stock to remedy an inadequacy of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of common stock, at their addresses, a copy of the order and a copy of this subsection (1). If an assessment is not paid within the time prescribed in the order or such shorter period as the directors decide, but not less than thirty days, the state bank may, within sixty days thereafter as the banking board

may prescribe in its order, offer the shares of the defaulting stockholders for sale at public auction or private sale at a price that shall not be less than the amount of the assessment and the cost of the sale. Any excess shall be paid to the prior owners. Except under circumstances where section 11-103-203 applies, the method of collection provided in this section shall be the sole method of collecting assessments. If an assessment is not paid within ninety days after the date of the order to levy or at such other date as may be specified in the order, but in no event less than thirty days, the commissioner may, with the approval of the banking board, proceed pursuant to part 8 of this article; however, for good cause shown to the banking board by the affected bank, the banking board may extend the ninety-day limit.

(2) If the banking board determines that the capital or reserves of any bank are inadequate, the banking board may order the bank not to make new loans or discounts.

**Source: L. 2003:** Entire article added with relocations, p. 1082, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-104 as it existed prior to 2003.

## ANNOTATION

- I. General Consideration.
- II. Assessment Funds.
- III. No New Loans.

### I. GENERAL CONSIDERATION.

**Annotator's note.** Since § 11-103-202 is similar to repealed laws antecedent to CSA, C. 18, § 31, relevant cases construing those provisions have been included in the annotations to this section.

**The purpose of this section is to make good impaired capital** and to permit an action to enforce payment of the assessment if necessary. *Allen v. McFerson*, 77 Colo. 186, 235 P. 346 (1925).

**Purpose is also to protect depositors and the general public.** An assessment which the bank commissioner orders, and which the directors of the bank levy, is made for the purpose of protecting the bank's depositors and in the interest of the public in general who might be induced to transact business with the bank. *Lengel v. Commercial Bank*, 87 Colo. 331, 288 P. 174 (1930).

**Fact that bank did make assessment is sufficient compliance with this section.** Compliance with this section is sufficient where the pleadings and proof show that an assessment was in fact made by the officers of a bank. *Allen v. McFerson*, 77 Colo. 186, 235 P. 346 (1925).

**Incorrect reports of directors do not bar collection of assessments.** The fact that reports which bank directors made as to the condition of the bank appeared a number of years later to be incorrect, and that certain notes listed as assets were uncollectible or had become worthless, does not create an estoppel which bars the bank from collecting assessments ordered by the bank commissioner, and which were levied by its board of directors, if the same was found to be

necessary, as it was, to protect depositors and creditors, and the public at large. *Lengel v. Commercial Bank*, 87 Colo. 331, 288 P. 174 (1930).

**Claim of fraud in purchase of bank stock cannot be urged as defense in action to collect an assessment.** The claim on the part of a stockholder who was sued for an assessment made upon his stock, that he purchased the stock through fraud on the part of the officers of the bank, cannot be urged in an action to recover on the stockholder's liability. *Lengel v. Commercial Bank*, 87 Colo. 331, 288 P. 174 (1930).

**Insufficient assessment does not alter stockholder's statutory liability.** The fact that an assessment was insufficient for the purpose for which it was levied does not alter the stockholder's statutory liability. *Broadbent v. McFerson*, 80 Colo. 264, 250 P. 852 (1926).

### II. ASSESSMENT FUNDS.

**Where assessment funds are not kept separate, etc., stockholders cannot claim a preference.** Where the general finding of the court was that funds received by a bank from an assessment were not kept separate from other funds of the bank; that the funds were treated as other assets of the bank; that they were used as other money and property of the bank in the transaction of its daily business; and that it did not appear that any of that fund was used in the payment of the debts of the bank, the stockholders cannot claim a preference, nor that the assessment fund should be held available for the satisfaction of such claim. Neither should those stockholders, who paid their assessments, be given credit therefor on their statutory liability. *Broadbent v. McFerson*, 80 Colo. 264, 250 P. 852 (1926).

**This fund, when paid in, could not, by any**



**process of reasoning, become a liability of the bank;** neither could the bank commissioner, nor the officers of the bank, change the character of that fund from an asset to a liability by an entry on the books of the bank. *Broadbent v. McFerson*, 80 Colo. 264, 250 P. 852 (1926).

**Assessment fund due bank, not creditors.** Where an assessment of 50% was made by the bank directors for the sole purpose of restoring the impaired capital of the bank, the fund was due to the bank, not to the creditors. *Broadbent v. McFerson*, 80 Colo. 264, 250 P. 852 (1926).

### III. NO NEW LOANS.

**Commissioner has power to give notice when capital is impaired.** The provisions of subsection (2) necessarily imply that the bank commissioner has power to give notice whenever there is an impairment of capital. *Lengel v. Commercial Bank*, 87 Colo. 331, 288 P. 174 (1930).

**11-103-203. Liability of shareholders.** (1) The shareholders of every state bank shall be held individually responsible, equally and ratably, and not for another, for all contracts, debts, and engagements of said bank, to the extent of double the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

(2) The term "shareholder" shall apply not only to such persons as appear on the books of the bank as shareholders, but also to every owner of stock, legal or equitable, although the stock may stand on such books in the name of another person, but not to a person who holds the stock as collateral security for the payment of a debt.

(3) Any shareholder of any state bank who has transferred his or her shares or caused such transfer to appear on the books of the bank within sixty days immediately preceding the capital inadequacy of such bank, or who has made such transfer with knowledge of such impending capital inadequacy, shall be liable to the same extent that the transferee or subsequent transferee fails to meet such liability. This section shall not be construed to affect in any way any recourse that such shareholder might otherwise have against those in whose names such shares appear upon the books of the bank at the time of such capital inadequacy.

(4) If the capital of any state bank becomes inadequate, and its assets and affairs have been taken possession of by the banking board pursuant to this code, and the banking board is of the opinion that it will become necessary in the course of liquidation of such bank to resort to the liability of the shareholders as provided for in this section, in order to make good the contracts, debts, or engagements of such bank, it shall be lawful for the banking board to file in the office of the county clerk and recorder of any county in this state, wherein any real estate belonging to any shareholder of such bank is situated, a statement in writing to the effect that such person is a stockholder of such bank (naming it) and that such bank is in process of liquidation, and stating the number of shares held by such shareholder and their aggregate par value and the extent of such shareholder's liability under this code.

(5) Such statement shall be duly endorsed as filed by such county clerk and recorder, giving the date of filing, and shall be indexed with the name of the shareholder as grantor and the name of the bank as grantee, and shall be recorded as mortgages of real estate are required to be recorded, and from the date of filing of such statement the same shall be a lien upon any real estate of such shareholder located in such county.

(6) If such shareholder thereafter deposits with the banking board an amount of money equal to double the amount of the par value of his or her shares, to be held by the banking board as security for the shareholder's liability under this section, then the banking board shall execute and file with such county clerk and recorder a release of such lien and, upon completing the liquidation of such bank, shall return to such shareholder any excess of such deposit, if such shareholder's ultimate liability shall prove to be less than the amount so deposited with the banking board; and in all cases where the liability of the shareholder has been satisfied, either as the result of litigation or otherwise, such liens so filed shall be released by the banking board. The expense of filing and recording such liens and releases thereof shall be paid out of any assets of the bank in the possession of the banking board.

(7) The liability imposed by this section shall not extend to shareholders in any bank that has become a member of the federal deposit insurance corporation; but if any bank that has become a member of the federal deposit insurance corporation ceases to remain a

member thereof, the double liability mentioned in this section shall extend to the shareholders in any such bank as provided in this section.

(8) No stockholder of a state bank shall set off against his or her stockholder liability any claim he or she may have as a depositor in or creditor of any insolvent bank.

**Source:** L. 2003: Entire article added with relocations, p. 1082, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-105 as it existed prior to 2003.

## ANNOTATION

- I. General Consideration.
- II. Liability of Parties.
- III. Enforcement.
  - A. Creation of Lien.
  - B. Foreclosure.
  - C. Evidence.

### I. GENERAL CONSIDERATION.

**Annotator's note.** Since § 11-103-203 is similar to repealed laws antecedent to CSA, C. 18, § 50, relevant cases construing those provisions have been included in the annotations to this section.

**This section is applicable alike to ordinary commercial institutions and savings banks.** Colo. Sav. Bank v. Evans, 12 Colo. App. 334, 56 P. 981 (1898).

### II. LIABILITY OF PARTIES.

**This section provides for double liability to be borne by four classes of persons:** First, any shareholder of record on the books of the bank; second, any one who, though not appearing on the books as a shareholder, is an "owner of stock, legal or equitable", but not "a person who holds the stock as collateral security for the payment of a debt"; third, any one who has transferred his stock within sixty days before the bank's insolvency; and, fourth, any one who has transferred his stock with knowledge of the bank's impending insolvency. McFerson v. Anderson, 96 Colo. 171, 40 P.2d 614 (1935).

**The liability of stockholders of an insolvent bank is strictly statutory.** Bundy v. Wilson, 66 Colo. 253, 180 P. 740 (1919).

**Liability cannot be extended beyond provisions of this section.** Liability of stockholders in a banking corporation is undoubtedly a creature of statute. It does not exist at common law; hence it can be said that such liability, being statutory, cannot be extended beyond the plain purpose and intention of the statute. Buenz v. Cook, 15 Colo. 38, 24 P. 679 (1890).

**The purpose of liability is to provide a fund for the payment of the debts of the bank.** McDonald v. McFerson, 80 Colo. 4, 249 P. 496 (1926).

**Liability is a contractual and not a penal liability.** This liability, unlike the liability imposed by the statute upon directors or officers of a corporation for its debts, because of their fraud or negligence in the management of the affairs of the corporation, is not penal in its nature; it is a liability voluntarily assumed by the act of becoming a stockholder, and an obligation thus assumed is purely contractual, contains all the elements of a contract, and is to be enforced as such. Adams v. Clark, 36 Colo. 65, 85 P. 642 (1906).

**If a bank could purchase its own stock, this liability could be avoided,** its capital depleted, and there would be no security to the depositors except in the bank itself. Kassler v. Kyle, 28 Colo. 374, 65 P. 34 (1901).

**Party assuming to act as stockholder cannot escape liability.** A party who assumes to act in the capacity and exercise the rights of a stockholder, attends meetings, and, after the bank is closed by the bank commissioner, joins with others to salvage the concern cannot be heard to deny his character as a stockholder when charged as such under this section. Bundy v. Wilson, 66 Colo. 253, 180 P. 740 (1919).

Where a person holds no stock in a banking corporation, in any capacity, but is nevertheless elected a member of the board of directors, files his oath as such and accepts the office of president, he will not, on the failure of the bank, escape the statutory liability. Swenson v. McFerson, 91 Colo. 519, 17 P.2d 530 (1932).

**The liability of the stockholders being several,** it was not essential that all should have been included in the same judgment. The court was empowered, after rendering judgment against the defendant stockholders, who had been served or had appeared, to continue the cause, for the purpose of acquiring jurisdiction of the persons or property of the others, who were named in the decree as being nonresidents but not served, in order that complete relief might be administered with respect to the subject of the cause. Toll v. Cobbey, 22 Colo. App. 244, 124 P. 357 (1912).

**Stockholders may not set off their deposits against their statutory liability** since this would make stockholders who are depositors preferred creditors against the fund, and, in a



measure, defeat its purpose. *McDonald v. McFerson*, 80 Colo. 4, 249 P. 496 (1926).

### III. ENFORCEMENT.

#### A. Creation of Lien.

**Bank commissioner filing statement claiming lien has same standing as judgment creditor.** There is no substantial reason why the same rule that applies to a judgment creditor who, without notice of unrecorded conveyance, files a transcript of his judgment and whose lien is thereby superior to the grantee in the deed, should not be applied in favor of a bank commissioner who files a statement claiming a statutory lien under this section. *Fleming v. McFerson*, 94 Colo. 1, 28 P.2d 1013 (1933).

This section does not attempt to give the bank commissioner power to enforce the lien by selling the property, or make his act conclusive of the ownership of the stock or of the real estate; nor does it attempt to forbid resort to a court, which alone has jurisdiction to determine such matters after notice to the stockholder and after he has been afforded an opportunity to be heard. *Fleming v. McFerson*, 94 Colo. 1, 28 P.2d 1013 (1933).

#### B. Foreclosure.

**Section is not void** because it does not expressly provide for foreclosure or other judicial proceedings. *Fleming v. McFerson*, 94 Colo. 1, 28 P.2d 1013 (1933).

**The district court has jurisdiction** in all suits to foreclose liens. *Fleming v. McFerson*, 94 Colo. 1, 28 P.2d 1013 (1933).

**The suit is administrative in character**, the main purpose being to enforce contribution by as many of the stockholders as practicable, within the limit of liability fixed by the statute, to the satisfaction of the whole indebtedness of the insolvent bank in excess of its assets. *Toll v. Cobbey*, 22 Colo. App. 244, 124 P. 357 (1912).

**Bank not a necessary party.** To an action to ascertain the liabilities of the stockholders of a defunct bank and for judgment against them, the bank is not a necessary party. *Kipp v. Miller*, 47 Colo. 598, 108 P. 164 (1910).

**Complaint held sufficient.** *Richardson v. Boot*, 18 Colo. App. 140, 70 P. 454 (1902).

#### C. Evidence.

**Books and records are admissible in evidence.** In a proceeding to enforce the stockholders' liability under this section, books and records were clearly competent, as admissions against interest, if on no other ground, whether original entry or otherwise. *Denver & R.G.R.R. v. Wilson*, 4 Colo. App. 355, 36 P. 67 (1894); *Plummer v. Struby-Estabrooke Mercantile Co.*, 23 Colo. 190, 47 P. 294 (1896); *Zang v. Wyant*, 25 Colo. 551, 56 P. 565 (1898); *Kipp v. Miller*, 47 Colo. 598, 108 P. 164 (1910).

**Stock ledger is admissible to prove who are the stockholders.** In an action to recover the statutory liability of alleged stockholders of an insolvent bank, the stock ledger of such bank, identified and supported by the testimony of the ex-cashier of the bank, is competent and sufficient evidence to prove that appellants are stockholders of the insolvent bank. *Adams v. Clark*, 36 Colo. 65, 85 P. 642 (1906).

**Evidence sufficient to sustain nonresident's statutory liability.** *McFerson v. Anderson*, 96 Colo. 171, 40 P.2d 614 (1935).

## PART 3

### CHARTERING A STATE BANK

**11-103-301. Incorporators.** Five or more individual incorporators desiring to organize a state bank shall file with the banking board, in triplicate, an application for charter on the form prescribed therefor and together with all other documents required by section 11-103-303, all of which instruments shall be duly signed by each of the incorporators and sworn to before an officer authorized by the laws of this state to administer oaths. A majority of the incorporators shall be residents of the state and citizens of the United States. Each incorporator shall, prior to the filing of said application, subscribe and pay in full in cash for stock having a par value of not less than one percent of the minimum capital and paid-in surplus requirements.

**Source: L. 2003:** Entire article added with relocations, p. 1084, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-106 as it existed prior to 2003.

## ANNOTATION

**Annotator's note.** Since § 11-103-301 is similar to § 11-3-106 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**Legislative intent.** The general assembly intended to assure that, in order to protect the

public, a new bank should commence operations with its capital and paid-in surplus intact and with its organizational expenses paid. *Firstbank of N. Longmont v. Banking Bd.*, 648 P.2d 684 (Colo. App. 1982).

**11-103-302. Application fees.** Each application for charter shall be accompanied by a fee established by the banking board pursuant to section 11-102-104 (11). The fee may be refunded to the incorporators if the application for charter is withdrawn prior to the date set for public hearing.

**Source: L. 2003:** Entire article added with relocations, p. 1084, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-107 as it existed prior to 2003.

**11-103-303. Application for charter.** (1) After the capital stock has been fully subscribed, the incorporators shall make application to the banking board for a charter. The incorporators shall submit to the banking board the following:

(a) Its proposed articles of incorporation in duplicate, in such form as the banking board shall prescribe and as shall be acceptable to the secretary of state for purposes of filing, containing the following information: The name of the state bank; whether the state bank is to exercise trust powers; the community in which it is to be located; the amount of capital, the number of shares of each class, the relative preferences, powers, and the rights of each class, the par value of the shares of each class, and the amount of the paid-in surplus; a statement whether voting for directors shall or shall not be cumulative, and the extent of the preemptive rights of stockholders; and such other proper provisions to govern the business and affairs of the state bank as may be desired by the incorporators.

(b) An application for a charter in such form and containing such information as the banking board requires, including but not limited to the following: The name, business and residence address, and business and professional affiliations of each director and executive officer; the name, residence, citizenship, and occupation of each subscriber and the number of shares for which he or she has subscribed; the past and present connection with any bank, other than as a customer, on terms generally available to the public of each director and each subscriber to more than five percent of the capital stock; the amount to be borrowed and from whom borrowed on any stock issued to a subscriber to more than five percent of the capital stock; the address at which it is proposed that the state bank do business or, if such address is not known, the area within a radius of one-half mile in which the proposed bank is to be located and the community that it proposes to serve; a statement that all the proposed bylaws have been attached as an exhibit to the application; and such other information as the banking board may reasonably require to enable it to determine whether a charter should be issued. The proposed bylaws shall be attached to the application as an exhibit.

(2) If the proposed articles of incorporation or application do not comply with the requirements of this code, and with the requirements of the banking board issued pursuant thereto, the banking board shall, within thirty days after the receipt thereof, return both of the said documents to the incorporators, calling attention to the defects therein. If such articles of incorporation and application are not so returned by the banking board within thirty days after the receipt thereof, they shall be deemed to have been filed with the banking board as of the date received in its office; otherwise they shall be deemed filed as of the date the amended documents, with all defects corrected, are received in the commissioner's office.



(3) Not more than forty days after the date upon which the completed application and all required documents are properly filed with the banking board, the banking board shall mail notice of such filing by registered or certified mail to each bank within a three-mile radius of the location of the proposed bank and to such other persons or banks as the banking board may designate. Such notice shall be in the form prescribed therefor by the banking board and shall include a statement that an application for a state banking charter has been filed, the date of such filing, the names and addresses of the incorporators thereof, and the location of the proposed bank. The banking board shall also cause such notice to be published, at least one time, not more than forty days after the date of filing such completed application, in a newspaper of general circulation within the community in which such proposed bank is to be located.

**Source: L. 2003:** Entire article added with relocations, p. 1084, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-109 as it existed prior to 2003.

### ANNOTATION

**Annotator's note.** Since § 11-103-303 is similar to § 11-3-109 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**Board must seek information on the primary contributors to proposed bank capitalization.** The clear wording of the applicable statutes directs the banking board to demand and consider specified information concerning those persons who have expressly committed themselves to the primary capitalization of the proposed bank through stock subscriptions. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Location of proposed bank must be clear in application.** In a situation where the address at which the proposed state bank will do business is not known, subsection (1)(b) requires that the charter application describe the area within a radius of one-half mile in which the bank is to be located. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Notice must be given to banks in area of proposed bank.** This section requires the board to send written notice of an applicant's request for a charter to banks doing business in the community in which applicant's proposed bank is to be located. *Colo. Banking Bd. v. Finnigan*, 139 Colo. 92, 336 P.2d 98 (1959).

**"Fully subscribed" defined.** The term "fully subscribed" means "totally", and not "totally and unconditionally" subscribed. *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**Intent in using words "fully subscribed".** The use of the words "fully subscribed" is intended to insure that the applicants account for 100 percent of the subscribed stock. *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**A stock subscription agreement conditioned upon the approval of the board of governors of the federal reserve system satisfies the requirement of subsection (1) that the stock of a proposed commercial bank be "fully subscribed".** *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**Financial information need not be submitted at time of charter application.** Since, pursuant to § 11-3-111, the stock for a new bank cannot be issued until a charter is granted, it is inconsistent for subsection (1)(b) of this section to require that financial information on issued stock be submitted at the time of the application for the charter. *First Nat'l Bank v. Banking Bd.*, 663 P.2d 261 (Colo. App. 1983).

It is neither logical nor practicable to require submission of detailed information regarding borrowings on stock purchases at the time of an application for a bank charter. *First Nat'l Bank v. Banking Bd.*, 663 P.2d 261 (Colo. App. 1983).

**11-103-304. Procedure for granting or denying charter.** (1) Within sixty days following the filing of the completed application for charter, the commissioner shall make or cause to be made a careful investigation to determine that the following requirements have been met:

- (a) That the applicant has proceeded in a lawful manner;
- (b) That the name is not deceptively similar to that of another bank or otherwise misleading;
- (c) That the persons who will serve as directors or officers, insofar as such persons are known, possess the qualifications and experience required under rules promulgated by the

banking board and that the qualifications and financial status of the incorporators, directors, officers, and persons in control of the bank, as defined in section 11-102-302 (2), are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board;

(e) That the proposed or amended articles of incorporation and bylaws are appropriate or may be amended to be appropriate.

(2) If the commissioner determines that any of the requirements in subsection (1) of this section have not been met in any respect, he or she shall notify the applicant of such deficiencies and of corrective measures deemed appropriate. Within six months after the filing of an application for charter, and prior to the hearing prescribed in subsection (3) of this section, the commissioner shall report to the banking board that the applicant has met all of the requirements of subsection (1) of this section, if such be the case, or shall report which requirements have been met and which have not been met, together with the circumstances respecting such deficiencies. This report shall be introduced by the banking board into the record of the hearing on such application.

(3) (a) The banking board, within six months after the filing of an application for charter, and subject to subsection (7) of this section, shall hold a public hearing to consider the application; except that the banking board, for valid reasons and good cause, may postpone such hearing. At such hearing, the applicant shall have the burden of proving:

(I) That the proposed bank will serve a public need and advantage in the community or area of the community that the bank will serve; and

(II) That the volume of business in the community or area of the community that the proposed bank will serve is such that profitable operation of the bank may be reasonably projected.

(b) Notwithstanding any other provision of this section, if the banking board has given notice pursuant to subsection (5) of this section of a hearing on any application for charter filed pursuant to this section and the banking board has received no written protests against such charter application on or before the tenth day preceding the date fixed for the hearing, the banking board may grant such charter without a hearing as otherwise required in this section if the applicants for such charter are known to the banking board.

(4) On hearing, the banking board may admit in evidence the application for charter and any other relevant information in the files of the division. The applicant and all others receiving notice by registered or certified mail under subsection (5) of this section are also entitled to be heard and to introduce testimony at such hearing, as well as such others as the banking board may determine to be necessary.

(5) The banking board shall give notice of the hearing on application for charter provided in subsection (3) of this section at least thirty days in advance of the hearing date fixed by the banking board, by registered or certified mail, to the applicant, to each bank within a three-mile radius of the location of the proposed bank, and to such other persons or banks as the banking board may designate. Such notice shall be in the form prescribed by the banking board and shall include the names of the incorporators, the name of each stockholder subscribing to ten percent or more of the stock of the bank, the name and location of the proposed bank, the date, time, and place of the hearing, and a statement declaring that the application and proposed articles of incorporation or amended articles of incorporation are available for inspection in the office of the banking board. The banking board shall also cause such notice to be published at least one time not less than twenty days prior to the date fixed for such hearing in a newspaper of general circulation within the community in which the proposed bank is to be located.

(6) Within one hundred twenty days following the date of conclusion of the hearing, the banking board shall issue a written order requiring the commissioner to grant a charter if a majority of the banking board finds that the requirements of subsection (1) of this section have been met and that the applicant has met the burden of proof prescribed in subsection (3) of this section. The banking board shall make execution of its order to grant a charter contingent upon the proposed bank making a bona fide application for membership in the federal deposit insurance corporation or the federal reserve system. In applications where management has not been fully disclosed at the time of the hearing, the banking board may



make execution of its order to grant a charter contingent upon its subsequent approval of management. If a majority of the banking board finds that the requirements of subsection (1) of this section or the burden of proof of subsection (3) of this section have not been met, the application for charter shall be denied. The banking board may revoke a charter that may have been granted in any case where the proposed bank has not exercised its charter and opened for business within six months after the date of the order to grant the charter.

(7) If within a ninety-day period there have been filed with the banking board two or more applications for charter for state banks to serve the same community, the banking board may hold a single hearing to consider such applications. The banking board may grant or deny a charter to one or more of the applicants without regard to the priority in time of filing applications. The determination of the banking board to deny a charter to an applicant who might otherwise qualify for a charter under subsections (1) and (3) of this section shall be based upon a finding that the public need or advantage of the community or area of the community in which the proposed bank will be located will best be served by such denial and by the granting of a charter on another application or other applications heard at such single hearing.

(8) It shall be a criminal offense against this code for a proposed state bank to perform any act as a state bank other than to perfect its organization, obtain and equip a place of business, or otherwise prepare to do business as a state bank prior to receiving a charter.

(9) Unless otherwise provided by law to the contrary, articles of incorporation, amended articles of incorporation, or amendments to articles of incorporation shall be delivered and filed as follows:

(a) Duplicate originals shall be delivered to the secretary of state for filing in accordance with the general corporate laws of this state;

(b) A verified copy shall be filed in the office of the clerk and recorder for the county in which the state bank is located;

(c) A copy to which the commissioner shall affix the charter, or certificate of approval in the case of amendments, shall be delivered by the commissioner to the applicant.

**Source:** L. 2003: Entire article added with relocations, p. 1085, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-110 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-103-304 is similar to § 11-3-110 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**Section mandatory.** This section requiring the state banking board to consider properly filed applications is phrased in mandatory terms. *Northern Nat'l Bank v. Banking Bd.*, 37 Colo. App. 135, 547 P.2d 253 (1975).

**"Fully subscribed" is not unconditionally subscribed.** There is nothing in the statutory language of this section or § 11-3-109 or 11-3-111 to indicate that "fully subscribed" means unconditionally and irrevocably subscribed. *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**It is the responsibility of the board to maintain a sound banking structure** in the state of Colorado and to grant charters only to those applicants which in its judgment will be financially successful and serve a public need and

advantage in the area where the new bank seeks to be located. *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**Board not required to determine whether federal approval obtained.** The banking board is not required as a part of its prechartering duties to determine that the petitioners have obtained federal approval under the federal Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et seq. *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**The hearings clearly contemplated by the law are held for the purpose of giving to all interested persons an opportunity to furnish facts or opinions for the guidance of the commission in the performance of its duties in granting or denying a charter.** *Colorado Banking Bd. v. Finnigan*, 139 Colo. 92, 336 P.2d 98 (1959).

**The state banking board may determine whether to grant bank charter** and has jurisdiction to hold hearings to that effect. The district courts cannot usurp this power. *Banking Bd. v. District Court*, 177 Colo. 77, 492 P.2d 837 (1972).

**This section places the burden on the applicant at the hearing to show** that the proposed bank will serve a public need and advantage in the community and that the volume of business in the community is such that profitable operation of the bank may be reasonably projected. *Goldy v. Henry*, 166 Colo. 401, 443 P.2d 994 (1968).

**Subsection (3) clearly places the burden of proof upon the applicants.** *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**Public need and advantage.** The purpose of a similar requirement, i.e., a finding that the industrial bank "will promote the convenience and advantage of the community" is to protect prospective depositors and other creditors in their dealings with the bank and not to protect competitors. *Banking Bd. v. Turner Indus. Bank*, 165 Colo. 147, 437 P.2d 531 (1968).

The board seems to have determined the "public need and advantage" to be synonymous with "so long as existing institutions are not affected by additional competition". Such construction is contrary to the law, for competition may benefit the public by causing protestant banks to review their policies, increase interest rates on deposits, and even augment their service to the community in which they do business. *Banking Bd. v. Turner Indus. Bank*, 165 Colo. 147, 437 P.2d 531 (1968).

**Too strict a monopoly in the banking field is as undesirable as having an excessive number of banks.** *Banking Bd. v. Turner Indus. Bank*, 165 Colo. 147, 437 P.2d 531 (1968).

**The nature of competition in banking in the area may be considered.** Other factors, such as the already highly competitive nature of banking in the area, outweighed the convenience factor. It was within the board's competence, applying its expertise, to make this determination, and it should not be disturbed on review. *Goldy v. Henry*, 166 Colo. 401, 443 P.2d 994 (1968); *Banking Bd. v. Turner Indus. Bank*, 165 Colo. 147, 437 P.2d 531 (1968).

**Board may not approve application which shows violation of branch bank prohibition.** The procedure for incorporating a new bank, the proposed operation of the new bank, and the basis upon which the charter for the new bank was granted met with the approval of the banking board which was fully apprised of all the facts concerning the common ownership of stock, the common directors, and the other facts concerning the relationship between the two banks. None of the facts as shown from the record, necessarily and as a matter of law, reveal that the banking board's grant of the state charter to the applicant bank is in violation of the prohibition against branch banking. *Peoples Bank v. Banking Bd.*, 164 Colo. 564, 436 P.2d 681 (1968).

**Court may not speculate on future violation of law.** Where it would be necessary for the

court to speculate that, after issuance of the bank's charter, the applicants and the bank would thereafter proceed to act in direct violation of applicable federal laws, such speculation by the court would be contrary to the settled legal principle that it is precluded from deciding abstract or contingent questions. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Board must also consider primary capitalizers.** The clear wording of the applicable statutes directs the banking board to demand and consider specified information concerning those persons who have expressly committed themselves to the primary capitalization of the proposed bank through stock subscriptions. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**The weight to be given to uncontroverted testimony** is peculiarly within the province of the board. The board is not bound to accept testimony at face value merely because it is not directly contradicted. *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**When record is barren, court may remand to board.** Where the record of proceedings before the Colorado banking board, denying an application for a charter for a state bank, are devoid of information as to what transpired at a hearing held and a reviewing court cannot pass upon the validity of the board's order denying the charter, the matter will be remanded for the taking and recording of all testimony, exhibits, and other evidence and the making of specific findings as the basis for an order granting or denying such charter. *Colo. Banking Bd. v. Finnigan*, 139 Colo. 92, 336 P.2d 98 (1959).

**Court may not compel board to consider factors other than those in statute.** The district court would be in error if it construed the governing statutes to require that the banking board consider factors other than those specified by the clear provisions of the statute. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Board's expertise utilized.** In weighing the evidence and drawing inferences therefrom, the board may utilize its expertise in banking matters. *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**Board, not court, weighs and evaluates evidence.** The weighing and evaluation of the testimony and evidence offered as to an application for a charter is the statutorily delegated power and responsibility of the banking board, and it is beyond the power of a reviewing court to substitute its judgment for that of the fact-finding authority. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

Where the inferences to be drawn from evidence are conflicting, the reviewing court may not displace an administrative agency's choice between two fairly conflicting views, even



though the court could justifiably have made a different choice had the matter been before it de novo. *Walton v. Banking Bd.*, 36 Colo. App. 311, 541 P.2d 1254 (1975).

**Court may modify board order when basis is on record.** Where the basis for modification of the banking board's order appears in the record, the court may modify and correct that order on appeal. *Academy Blvd. Bank v. Banking Bd.*, 30 Colo. App. 331, 492 P.2d 76 (1971).

**Applicants need not allege a substantial change of fact in filing a second application** for a charter. *Northern Nat'l Bank v. Banking Bd.*, 37 Colo. App. 135, 547 P.2d 253 (1975).

**Res judicata is inapplicable.** A literal reading of this section would prevent the board from using res judicata to deprive an applicant of his right to a hearing and would impose on it a statutory duty to examine each application for a license as an original proceeding. *Northern Nat'l Bank v. Banking Bd.*, 37 Colo. App. 135, 547 P.2d 253 (1975).

**When hearing considered concluded.** Where additional time is granted for the filing of briefs after the close of an evidentiary hearing, the hearing cannot be considered concluded until such briefs are filed. *Hyde v. Banking Bd.*, 38 Colo. App. 41, 552 P.2d 32 (1976).

## PART 4

### SHARES AND DISTRIBUTIONS

**11-103-401. Subscription calls.** After a charter has been granted, the directors may call for the payment of the subscriptions in full within thirty days after the date of the notice that the charter has been granted. No share shall be issued until the par value and the pro rata portion of the paid-in surplus specified in the charter have been paid in full in cash.

**Source: L. 2003:** Entire article added with relocations, p. 1088, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-111 as it existed prior to 2003.

### ANNOTATION

**Annotator's note.** Since § 11-103-401 is similar to § 11-3-111 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**"Fully subscribed" is not unconditionally subscribed.** There is nothing in the statutory

language of this section or § 11-3-109 or 11-3-110 to indicate that "fully subscribed" means unconditionally and irrevocably subscribed. *Banking Bd. v. Columbine State Bank*, 194 Colo. 54, 569 P.2d 871 (1977).

**Applied** in *First Nat'l Bank v. Banking Bd.*, 663 P.2d 261 (Colo. App. 1983).

**11-103-402. First meetings of stockholders - director's oath - bylaws.** (1) After the capital and surplus have been fully paid in cash and before any business is transacted, the incorporators shall call a meeting of the stockholders, on at least ten days' notice, to elect directors and to adopt bylaws, and shall direct the call, on at least five days' notice, of the first meeting of directors for election of officers.

(2) Every director of a state bank shall take and subscribe to an oath before a disinterested notary public that the director will, insofar as the duty devolves upon him or her, diligently and honestly administer the affairs of the bank and that he or she will not knowingly violate nor willingly permit to be violated any provision of the law.

(3) Bylaws may be adopted and amended by a majority vote at a stockholders' meeting, but the bylaws may provide for adoption or amendment by the board of directors of any provisions other than those relating to the duties, term of office, remuneration, reimbursement, or indemnification of a director. Copies of all bylaws and amendments thereto shall be filed with the commissioner.

**Source: L. 2003:** Entire article added with relocations, p. 1088, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-112 as it existed prior to 2003.

## ANNOTATION

**Failure to obtain capital and surplus may forfeit charter.** Where a banking corporation fails within the period prescribed to pay up its entire capital stock in cash, its charter is liable to

forfeiture. *People ex rel. Attorney Gen. v. City Bank*, 7 Colo. 226, 3 P. 214 (1883) (decided under repealed laws antecedent to CSA, C. 18, § 8, which were similar to this section).

**11-103-403. Stockholders' meetings - voting trusts - preemptive right - transfer of stock.** (1) A regular annual meeting of stockholders shall be held each year as the bylaws direct. A special meeting may be called at any time by the banking board or the commissioner, by not less than one-third of the directors, or by the holders of twenty-five percent of the outstanding voting shares. The regular annual meeting and special meetings of the stockholders shall be held at such place as may be designated in the bylaws. Notice shall be mailed at least ten days before a meeting to every person who is a stockholder of record twenty days before the date of the meeting or at such longer period as may be provided in the bylaws. Such notice shall be mailed to the stockholder's address on the records of the bank. No business shall be transacted at a special meeting that is not specified in the notice thereof or necessary or proper in connection with or incidental to the business specified. The holders of a majority of the outstanding voting shares, or their authorized representatives, shall constitute a quorum. In the absence of a quorum, a meeting may be adjourned from time to time without notice to the stockholders.

(2) Except on the election of directors, when cumulative voting is provided for in the charter, each share of common stock shall have one vote, which may be cast by the owner of record on the record date or by such owner's proxy, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares that it holds in any capacity other than as fiduciary.

(3) A stockholder authorized to vote may, by means of a proxy executed in writing, appoint a representative to cast his or her vote. The banking board may promulgate rules governing proxies and the solicitation thereof.

(4) No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the banking board. Approval shall be withheld or, if previously granted, revoked if it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures. In the absence of such approval, the record owner may vote his or her shares.

(5) Unless otherwise provided in the charter, if additional stock of a class is offered for sale, stockholders of record of the same class on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable, but shall terminate if not exercised within thirty days after the offer. If the right is not exercised, the stock shall not be offered for sale to others at a lower price, or on other more favorable terms, without the stockholders again being accorded a preemptive right to subscribe.

(6) No transfer of shares of stock shall be effective with respect to the bank until it has been entered upon the transfer books. The stock book shall be available for examination by a stockholder of the corporation at the principal place of business during its business hours.

**Source: L. 2003:** Entire article added with relocations, p. 1088, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-113 as it existed prior to 2003.

**11-103-404. Waiver of notice - meeting or vote.** (1) When a notice is required to be given to stockholders under this code, or the charter or bylaws of any state bank, a waiver thereof in writing, signed by the person entitled to said notice, either before or after the time stated therein, shall be deemed equivalent thereto.

(2) If the vote of stockholders at a meeting thereof is required or permitted to be taken in connection with any corporate action by any section of this code, the meeting and vote of stockholders may be dispensed with, if all of the stockholders who would have been



entitled to vote upon the action if such meeting were held consent in writing to such corporate action being taken.

(3) In the event that the action that is consented to is such as would have required the filing of a certificate under any of the other sections of this code if such action had been voted upon by the stockholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given under this section, in lieu of stating that the stockholders have voted upon the corporate action in question, if such last mentioned statement is required thereby.

**Source: L. 2003:** Entire article added with relocations, p. 1089, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-116 as it existed prior to 2003.

**11-103-405. Amendment of articles - change of location - authorized but unissued stock.** (1) A state bank may apply to the banking board to amend its articles of incorporation or to change its location.

(2) An application for an amendment of the articles of incorporation to change the authorized capital and the number and par value of the shares, to acquire or abandon trust powers, or to change its location shall be authorized by the vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders. Any other application may be authorized by the vote of a majority of the outstanding voting stock voted at a meeting of the stockholders.

(3) Notice of the application shall be sent to such persons and organizations as the banking board may require.

(4) The banking board shall approve an application:

(a) To change the name of the corporation if the proposed name is not deceptive or misleading;

(b) To increase the total capital by increasing the amount of capital stock; but an amendment increasing the total capital shall not become effective until the banking board finds that the new capital has been fully paid in cash; except that amendments increasing the capital stock of the bank in the category of authorized but unissued stock shall be approved pursuant to the provisions of subsection (6) of this section.

(5) In making its determination thereon, the banking board shall consider whether the public need and advantage would be served by granting the application and shall be guided by the standards prescribed for the approval of an application for a charter, insofar as they are reasonably applicable. In making its determination upon an application for change of location, the banking board shall consider the need and advantage of both the community or area of the community in which the bank will be located and the community or area of the community from which the bank will be moved.

(6) A state bank, upon application to and approval by the banking board and by vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders, by an amendment of the articles of incorporation, may authorize an increase in the capital stock of the bank in the category of authorized but unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to stock option or stock purchase plans adopted in accordance with the provisions of section 11-103-101 (2) (h), or in exchange for convertible preferred stock or convertible capital debentures in accordance with the terms and provisions of such securities. Authorized but unissued stock may also be issued from time to time for such other purposes and considerations as may be approved by the board of directors of the state bank and the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1089, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-117 as it existed prior to 2003.

**11-103-406. Dividends - when payable.** The board of directors of a state bank may declare dividends from retained earnings and from other components of capital specifically approved by the banking board so long as the declaration is made in compliance with the rules established by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1090, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-118 as it existed prior to 2003.

## PART 5

### DIRECTORS AND OFFICERS

**11-103-501. Directors and officers.** (1) The affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three nor more than twenty-five, shall be as fixed by the bylaws, and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States, two-thirds shall be residents of this state, and a majority shall reside within one hundred miles of the place of business of the bank; except that, if the bank is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public, at least three-fourths of the directors shall be citizens of the United States and a majority shall be residents of this state. A director need not own shares. No director may serve who has been convicted of fraud involving any financial institution or of a felony, but the banking board may waive this provision regarding a felony if it determines that the particular felony does not jeopardize the person's ability to act as a director. A director who is disqualified may be removed by the board of directors or by the banking board. No action taken by a director prior to his or her resignation or removal shall be subject to attack on the ground of his or her disqualification.

(2) Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

(3) Directors shall be elected by the stockholders at the first meeting, and thereafter, at the annual meeting or at a special meeting called for the purpose. If the charter provides for cumulative voting, the votes of each share may be cast for one person or divided among two or more, as the stockholder may choose. The person (to the number of directors to be elected) having the largest number of votes shall be elected.

(4) The term of office of directors shall be one year. Vacancies may be filled by vote of the board of directors until the next meeting of the stockholders.

(5) A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the charter, no director shall be removed unless the votes cast against a motion for his or her removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

(6) The officers designated by the bylaws shall be elected by the board of directors. A member of the board of directors shall be elected president. No officer shall be elected, or a contract executed for the officer's employment, for a period longer than one year. No person may be employed as an officer of a state bank who has been convicted of fraud involving any financial institution or of a felony, but the banking board may waive this provision regarding a felony if it determines that the particular felony does not jeopardize the person's ability to act as an officer. An officer may be removed by the board of directors at any time, but removal shall not prejudice any rights that the officer may have to damages for breach of contract of employment, unless the officer falsely answered any question or made any material misstatement of facts relating to any matter leading to or constituting any inducement to such employment.

**Source: L. 2003:** Entire article added with relocations, p. 1091, § 3, effective July 1.



**Editor's note:** This section is similar to former § 11-3-114 as it existed prior to 2003.

#### ANNOTATION

**This section assures responsibility of directors.** One of the purposes of this section is that only a person substantially interested should be entrusted with the control of the business of a bank. Another is that a director should be able to respond in something more than a nominal

amount in case of failure of business, for which failure he was, in part, in law, responsible. *Swenson v. McFerson*, 91 Colo. 519, 17 P.2d 530 (1932) (decided under repealed laws antecedent to CSA, C. 18, § 12, which were similar to this section).

**11-103-502. Directors' meetings - duties.** (1) The board of directors of a state bank shall meet at least once each calendar month. The banking board, the commissioner, or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance. Any director who fails to attend meetings of such board of directors for three consecutive months shall automatically cease to be a director, unless such absence is satisfactorily explained to the banking board or the commissioner, who shall, in such event, notify the president of such bank of the approval thereof.

(2) The board of directors or the executive committee of the board shall review at least monthly the following transactions occurring since the last review:

(a) Each loan, advance, discount, overdraft, and purchase or sale of a security that exceeds in amount one percent of the capital of the corporation pursuant to the rules promulgated by the banking board, and each loan, advance, discount, and overdraft that makes the total obligations from one obligor exceed that amount;

(b) Each purchase or sale of a security that, together with the bank's other purchases and sales in the security during the preceding two months, involves such amount.

(3) (a) The board of directors shall cause the financial statements of the state bank to be prepared in accordance with generally accepted accounting principles consistently applied, except as the banking board may otherwise provide in order to establish regulatory and competitive parity and pursuant to the policies expressed in section 11-101-102.

(b) The board of directors shall cause an audit of the state bank to be completed by an accounting firm composed of certified public accountants or a directors' examination by a public accountant or any other independent person or persons as determined by the banking board at least annually but at intervals of not more than fifteen months, as may be required by the banking board or its rules. The banking board shall adopt rules regarding the qualifications of such public accountant and other independent person or persons, who shall assume the responsibility for due care in such director's examinations. The banking board's rules shall also establish the scope of such directors' examinations, which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. The banking board may require an audit to be completed by an accounting firm composed of certified public accountants under certain circumstances. A report of the audit or directors' examination and any related management letters and documents shall be completed and submitted to the banking board within the time periods, in the form, and containing such information as the banking board may require in its rules. Such report of the audit or directors' examination and any related management letters and documents shall be reviewed by the directors at the next meeting of the board of directors.

(c) If a bank is owned or controlled by a bank holding company, the requirement of paragraph (b) of this subsection (3) may be fulfilled if:

(I) As required by the banking board and its rules, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the bank is included in the annual audit or directors' examination of the bank holding company by that firm;

(II) A report of the audit or directors' examination for the controlling bank holding company and any related management letters and documents is completed and submitted to the banking board within the time periods, in the form, and containing such information as the banking board may require in its rules; and

(III) An annual internal examination of the bank is prepared by the internal examination staff of the controlling bank holding company and kept available for submission to the banking board immediately upon the banking board's request.

(4) A state bank authorized to exercise trust powers shall not accept, or voluntarily relinquish, a fiduciary account without the approval or ratification of the board of directors, or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptances or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained, or disposed of without the approval of a committee as to which the bank has investment or review responsibility. At least once in every calendar year, the committee shall review the records of each fiduciary account as to which the bank has investment or review responsibility and shall determine the current value, safety, and suitability of the investments and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

**Source: L. 2003:** Entire article added with relocations, p. 1092, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-115 as it existed prior to 2003.

**11-103-503. Waiver of notice - meeting or vote.** (1) When a notice is required to be given to directors under this code, or the charter or bylaws of any state bank, a waiver thereof in writing, signed by the person entitled to said notice, either before or after the time stated therein, shall be deemed equivalent thereto.

(2) If the vote of directors at a meeting thereof is required or permitted to be taken in connection with any corporate action by any section of this code, the meeting and vote of directors may be dispensed with, if all of the directors who would have been entitled to vote upon the action if such meeting were held consent in writing to such corporate action being taken.

(3) In the event that the action that is consented to is such as would have required the filing of a certificate under any of the other sections of this code if such action had been voted upon by the directors at a meeting thereof, the certificate filed under such other section shall state that written consent has been given under this section.

**Source: L. 2003:** Entire article added with relocations, p. 1093, § 3, effective July 1.

## PART 6

### INDEMNIFICATION AND INSURANCE

**11-103-601. Director and officer insurance and fidelity bonds - legislative declaration.** (1) The directors of a state bank shall require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent, or criminal conduct by them acting independently or in collusion or combination with any person. Such bonds may be in individual, schedule, or blanket form, and the premiums therefor shall be paid by the bank.

(2) The said directors shall also require suitable insurance protection to the bank against burglary, robbery, theft, and other insurable hazard to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(3) The directors shall be responsible for prescribing, at least once in each calendar year, the amount or penal sum of the bonds and policies specified in this section and the



sureties or underwriters thereon after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

(4) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in this code, including the provisions of section 11-101-102:

(I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, that provides insurance coverage to directors or officers, or both, of a bank but that does not grant coverage or that excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such bank, whether in its own name or on behalf of any other person or entity; or

(II) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of the bank by a receiver or other liquidator or by state or federal officials.

(b) No provision of part 8 of this article shall be construed to contravene or modify the expressed public policy set forth in this subsection (4).

**Source: L. 2003:** Entire article added with relocations, p. 1094, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-120 as it existed prior to 2003.

#### ANNOTATION

**FDIC claim is not barred under the "insured v. insured" exclusion since FDIC is not considered an "insured" within the meaning of policy of insurance.** To exclude liability for claims raised by FDIC as a receiver for an insolvent bank would defeat the provisions of

the Banking Code, which recognizes the power of a receiver to gather and distribute bank assets. *FDIC v. Bowen*, 865 P.2d 868 (Colo. App. 1993) (decided under law prior to 1993 amendment of former § 11-3-120).

**11-103-602. Indemnification and personal liability of directors, officers, employees, and agents.** The state bank shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7, C.R.S. State bank directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7, C.R.S. State bank directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

**Source: L. 2003:** Entire article added with relocations, p. 1095, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-121 as it existed prior to 2003.

**11-103-603. Deposit insurance - membership in federal reserve system - federal national mortgage association.** (1) A state bank is authorized to do any act necessary to obtain insurance of its deposits by the United States or any agency thereof and to acquire and hold membership in the federal reserve system or to take advantage of any other act or resolution of congress that may be enacted to aid, regulate, or safeguard state banks and their depositors, including any amendments of the same or any substitutions thereof. It may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) A state bank that is a member of the federal reserve system, or of the federal deposit insurance corporation, or of both may make payments to the federal national mortgage

association, a constituent agency of the national housing and home finance agency, of nonrefundable capital contributions, receive stock evidencing such capital contributions and hold and dispose thereof, contract with said association, and incur the expenses and otherwise comply with the then lawful regulations and requirements issued by said association from time to time to the extent a national bank in like circumstances is authorized by any act or resolution by the United States congress or by any lawful rule issued pursuant thereto.

**Source: L. 2003:** Entire article added with relocations, p. 1095, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-3-122 as it existed prior to 2003.

#### ANNOTATION

This section specifically authorizes state banks to contract for insurance with the federal deposit insurance corporation. *Atterson v. United States*, 232 F.2d 837 (10th Cir.), cert.

denied, 351 U.S. 975, 76 S. Ct. 1038, 100 L. Ed. 1492 (1956) (decided under repealed § 14-9-6, CRS 53, which was similar to this section).

#### PART 7

### MERGER, CONSOLIDATION, CONVERSION, AND SALE OF ASSETS

**11-103-701. Merger or conversion.** (1) Upon approval of the banking board, banks may be merged with, or converted into, a resulting state bank as prescribed in this article; except that the action by a constituent national bank shall be taken in the manner prescribed by, and shall be subject to, any limitation or requirements imposed by any law of the United States, which law shall also govern the rights of its dissenting shareholders.

(2) Nothing in the law of this state shall restrict the right of a state bank to merge with, or convert into, a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable laws of the United States and not by the law of this state.

**Source: L. 2003:** Entire article added with relocations, p. 1095, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-102 as it existed prior to 2003.

**11-103-702. Approval of merger by directors.** (1) Where there is to be a resulting state bank, the board of directors of each constituent state bank shall, by a majority of the entire board, approve a merger agreement, which agreement shall contain:

- (a) The name of each constituent bank and the location of each office;
- (b) With respect to the resulting bank, the name and the location of each proposed office; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares, and the par value of each share; whether preferred stock is to be issued and the amount, terms, and preferences; the amendments to the charter and bylaws;
- (c) The terms for the exchange of shares of the constituent banks for those of the resulting bank;
- (d) A statement that the agreement is subject to approval by the banking board and by the stockholders of each constituent bank;
- (e) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks;
- (f) Such other provisions as the banking board requires to enable it to discharge its duties with respect to the merger.



**Source: L. 2003:** Entire article added with relocations, p. 1096, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-103 as it existed prior to 2003.

**11-103-703. Approval by banking board.** (1) After approval by the board of directors of each constituent bank, the merger agreement shall be submitted to the banking board for approval, together with certified copies of the authorizing resolutions of the several boards of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any constituent national bank.

(2) Without approval by the banking board, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the constituent bank at the time of the last examination by a state or national bank examiner before the effective date of the merger.

(3) Within thirty days after receipt by the banking board of the papers specified in subsection (1) of this section, the banking board shall approve or disapprove the merger agreement. The banking board shall approve the agreement if it appears that:

(a) The resulting state bank meets all the requirements of state law as to the formation of a new state bank;

(b) The agreement provides for adequate capital as established by the banking board in its rules;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

(4) If the banking board disapproves an agreement, it shall state its objections and give an opportunity to the constituent banks to amend the merger agreement to obviate such objection.

(5) Where the resulting state bank is not to exercise trust powers, the banking board shall not approve a merger until satisfied that adequate provision has been made for successors to fiduciary positions held by constituent banks.

**Source: L. 2003:** Entire article added with relocations, p. 1096, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-104 as it existed prior to 2003.

**11-103-704. Approval by stockholders - rights of dissenters.** (1) To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock, at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments set forth in the merger agreement.

(2) The notice of the meeting of stockholders shall state that dissenting stockholders will be entitled to payment of the value of only those shares that are voted against the approval of the plan.

(3) The owners of shares that were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting state bank at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined as of the date of the shareholders' meeting approving the merger by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares involved, one by the board of directors of the resulting state bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the commissioner shall cause an appraisal to be made.

(4) The expenses of appraisal shall be paid by the resulting state bank.

(5) The resulting state bank may fix an amount that it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which it will pay dissenting shareholders of that constituent bank

entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.

**Source: L. 2003:** Entire article added with relocations, p. 1097, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-105 as it existed prior to 2003.

**11-103-705. Effective date of merger - certificate.** (1) A merger shall, unless a later date is specified in the agreement, become effective upon the filing with the banking board of the executed agreement, together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by such bank's president or a vice-president and a secretary. The charters of the constituent banks, other than the resulting bank, shall thereupon be deemed surrendered.

(2) The banking board shall thereupon issue to the resulting bank a certificate of merger, setting forth the name of each constituent bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the constituent banks is held.

**Source: L. 2003:** Entire article added with relocations, p. 1097, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-106 as it existed prior to 2003.

**11-103-706. Continuation of corporate entity.** (1) The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all of the rights, powers, and duties of each constituent bank, except as limited by the charter and bylaws of the resulting state bank.

(2) The resulting state bank has the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

(3) Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

**Source: L. 2003:** Entire article added with relocations, p. 1098, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-107 as it existed prior to 2003.

**11-103-707. Conversion from state bank to national and vice versa.** (1) Nothing in the law of this state shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and, upon completion of such conversion, it shall surrender its charter as a state bank.

(2) A national bank located in this state that follows the procedure prescribed by federal law to convert into a state bank shall be granted a state charter if it meets the requirements for the incorporation of a state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion.

(3) The converted bank shall be considered the same business and corporate entity as the converting bank with all of the rights, powers, and duties of the converting bank except as limited by the charter and bylaws of the resulting bank. It may use the name of the converting bank whenever it can do any act under such name more conveniently.

(4) Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.



**Source: L. 2003:** Entire article added with relocations, p. 1098, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-108 as it existed prior to 2003.

**11-103-708. Nonconforming assets.** If a constituent bank has assets that do not conform to the requirements of state law for the resulting bank, or if a converting national bank has assets that do not conform to the requirements of a state law for the converted state bank, or if, in either case, there are business activities that are not permitted for the resulting or converted state bank, the banking board may permit a reasonable time to conform with state law.

**Source: L. 2003:** Entire article added with relocations, p. 1098, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-109 as it existed prior to 2003.

**11-103-709. Sale of all assets of bank or department.** (1) Any state bank may sell to any other bank all, or substantially all, of the selling bank assets and business, or all, or substantially all, of the assets and business of any department of the selling bank.

(2) Any state bank may, upon assuming the liabilities relating thereto, purchase all, or substantially all, of the assets and business of another bank, or all, or substantially all, of the assets and business of any department of another bank.

(3) The agreement of purchase and sale shall be authorized and approved by the banking board and by the vote of a majority of the stockholders of the purchasing and selling banks at meetings called for the purpose in like manner as meetings to approve mergers are called, and filed with the commissioner, accompanied by evidence of such stockholders' approval in like manner as agreements of merger are filed. After such approval is given by the stockholders, a notice of such sale shall be published once a week for three successive weeks in a newspaper of general circulation in the county in which the selling bank has its principal office. Proof of such publication shall be filed with the division.

(4) Notwithstanding any term of the agreement, or of his or her contract of deposit, any depositor whose business is thus sold has the right, upon payment of any indebtedness owing by the depositor to the bank, to withdraw his or her deposit in full on demand after such sale unless, by dealing with the purchasing bank with knowledge of the purchase, the depositor ratifies the transfer.

(5) The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank pursuant to section 11-106-105.

(6) No right against, or obligation of, the selling bank, in respect of the assets or business sold, shall be released or impaired by the sale until one year from the last date of publication of the notice, pursuant to subsection (3) of this section, but, after the expiration of such year, no action shall be brought against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.

**Source: L. 2003:** Entire article added with relocations, p. 1099, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-4-110 as it existed prior to 2003.

## PART 8

### LIQUIDATION, DISSOLUTION, AND REORGANIZATION

**11-103-801. Voluntary liquidation and dissolution.** (1) With the approval of the banking board, a state bank may liquidate and dissolve. The banking board shall grant such approval if it appears that the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for that purpose and that

the capital of the state bank is adequate and such state bank has sufficient liquid assets to pay off depositors and creditors immediately.

(2) (a) Upon approval by the banking board, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation, and shall proceed to pay its depositors and creditors and to wind up its affairs.

(b) Within thirty days after the approval, a notice of liquidation shall be sent by mail to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box, and bailor of property at the address of such person as shown on the books of the bank. The notice shall be posted conspicuously on the premises of the bank and shall be given such publication as the banking board may require. The bank shall send with each notice a statement of the amount shown on the books to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the bank before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(c) As soon after approval as may be practicable, the state bank shall resign all fiduciary positions and take such action as may be necessary to settle its fiduciary accounts.

(d) Safe deposit boxes, the contents of which have not been removed within thirty days after demand, shall be opened. Sealed packages containing the contents of such box, with a certificate of inventory of contents, together with any other unclaimed property held by the bank as bailee and certified inventories thereof shall be transferred to the banking board, which shall retain them for six years unless sooner claimed by the person entitled to them. After six years the banking board shall sell or otherwise appropriately dispose of the property. The proceeds of any sale shall be transferred to the state treasurer as abandoned funds.

(e) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full, and all lawful claims of creditors and depositors shall promptly be paid. The unearned portion of the rental of a safe deposit box shall be returned to the lessee.

(f) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before all claims of depositors and creditors have been paid or, in the case of any disputed claim, the bank has transmitted to the banking board a sum adequate to meet any liability that may be judicially determined and any funds payable to a depositor or creditor and unclaimed have been transmitted to the banking board.

(3) Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to the banking board. Such unclaimed funds shall be held by the banking board for six years and, unless sooner claimed by the person entitled thereto, shall be transferred to the treasury of the county in which the bank is located. The county treasurer and his successors shall hold such money in trust for a period of six years, unless the same shall be sooner paid out to the beneficial owner thereof or a suit is instituted to recover such money or a portion thereof. Any money remaining in said fund six years after the same is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners therein to recover the same shall be forever barred.

(4) If the banking board finds that the assets will be insufficient for the full discharge of all obligations, or that completion of the liquidation has been unduly delayed, it may take possession and complete the liquidation in the manner provided in this code for involuntary liquidations.

(5) The banking board may require reports of the progress of liquidation. If it is satisfied that the liquidation has been properly completed, it shall cancel the charter and enter an order of dissolution.

**Source:** L. 2003: Entire article added with relocations, p. 1099, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-101 as it existed prior to 2003.



## ANNOTATION

Where a cause of action arose while the charter of a bank was still in force and the bank was a going concern, the dissolution of the bank did not deprive creditors of a remedy against it, although sought to be applied after

that time. *Steinhauer v. Colmar*, 11 Colo. App. 494, 55 P. 291 (1898); *Kipp v. Miller*, 47 Colo. 598, 108 P. 164 (1910) (cases decided under repealed laws antecedent to CSA, C. 18, § 62, which were similar to this section).

**11-103-802. Involuntary liquidation by banking board - reorganization.**

(1) (a) Except as otherwise provided in this code, only the banking board may take possession of a state bank if, after a hearing before the banking board, the banking board finds: The bank's capital is inadequate or it is otherwise in an unsound condition; the bank's business is being conducted in an unlawful or unsound manner; the bank is unable to continue normal operations; examination of the bank has been obstructed or impeded; or control of the bank has been assumed by any person or persons convicted of fraud or a felony in this state or any other jurisdiction, or by any partnership, association, or corporation controlled, directly or indirectly, by any person so convicted, unless the banking board determines that such person has been duly rehabilitated or otherwise that the bank will be honestly and efficiently managed.

(b) Notice of hearing shall be mailed by first class mail to the bank and the directors of the bank no less than ten days prior to the hearing. Any proceedings conducted pursuant to this subsection (1) shall be exempt from any provision of law requiring that proceedings of the banking board be conducted publicly.

(2) (a) The commissioner, upon order of the banking board, shall take possession by posting upon the premises a notice reciting that the commissioner is assuming possession pursuant to this code and the time, not earlier than the posting of the notice, when his or her possession shall be deemed to commence. A copy of the notice shall be filed in the district court in and for the county in which the bank is located. The commissioner shall notify the federal reserve bank of the district of taking possession of any state bank that is a member of the federal reserve system and shall notify the federal deposit insurance corporation of taking possession of any state bank that is a member of the federal deposit insurance corporation.

(b) When the commissioner has taken possession of a state bank, the commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business; to stop or to limit the payment of its obligations; to employ any necessary assistants, including legal counsel; to execute any instrument in the name of the bank; to commence, defend, and conduct in its name any action or proceeding to which it may be a party; to terminate such possession by restoring the bank to its board of directors; and to reorganize or liquidate the bank in accordance with this code. As soon as practicable after taking possession, the commissioner shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

(c) When the commissioner is in possession and while the commissioner's possession continues, there shall be a postponement, until six months after such taking, of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which a review must be taken, or a pleading, or other document must be filed, by the bank in any pending action or proceeding.

(3) (a) If the banking board determines, after hearing before the banking board, to liquidate the state bank, it shall give notice of its determination by posting upon the premises a notice reciting that the determination has been made to liquidate the bank. A copy of the notice shall be filed in the district court in and for the county in which the bank is located. The commissioner, upon order of the banking board, shall tender to the federal deposit insurance corporation or its successor the appointment as liquidator under section 11-103-805.

(b) If, in the opinion of the banking board, an emergency exists that may result in serious losses to the depositors, it may take possession of a state bank and may immediately appoint the federal deposit insurance corporation or its successor as liquidator in accordance

with section 11-103-805 without notice of a hearing. Notice of the banking board's emergency determination shall be posted and filed in the same manner as prescribed in paragraph (a) of this subsection (3). Within ten days after the banking board's emergency determination, the bank or the directors of the bank may file an application with the banking board to rescind its determination. The filing of an application shall not act as a stay of the banking board's action pursuant to this subsection (3). The banking board shall grant the application if it finds that its action was unauthorized and shall rescind its action taking possession and restore the bank to its board of directors. If no application is filed within ten days after the banking board's emergency determination, all action taken by the banking board shall be final.

(c) Notice of hearing shall be mailed by first class mail to the bank and the directors of the bank no less than ten days prior to the hearing. Any proceeding conducted pursuant to this subsection (3) shall be exempt from any provision of law requiring that proceedings of the banking board be conducted publicly.

(d) If the federal deposit insurance corporation or its successor does not accept the tender of appointment as liquidator, the banking board as liquidator shall proceed to liquidate the institution, upon first providing a bond executed by some surety company authorized to do business in this state, running to the people of the state of Colorado, that meets with the approval of the banking board, for the faithful discharge of its duties in connection with such liquidation and the accounting for all moneys coming into its hands. The cost of such bond shall be paid from the assets of the bank. Suit may be maintained on such bond by any person injured by a breach of conditions thereof.

(e) If the commissioner determines to reorganize the state bank or if the banking board, after staying its liquidation, orders such reorganization, the commissioner, after according a hearing to all interested persons, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who shall not receive payment of his or her claim in full under the plan, together with notice that, unless within fifteen days the plan is disapproved in writing by persons holding one-third or more of the aggregate amount of such claims, the commissioner will proceed to effect the reorganization. A department, agency, or political subdivision of this state holding a claim that will not be paid in full is authorized to participate as any other creditor.

(4) No judgment, lien, or attachment shall be executed upon any asset of the state bank while it is in the possession of the banking board. Upon the election of the banking board, in connection with a liquidation or reorganization:

(a) Any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the state bank during the banking board's possession, or within four months prior to commencement thereof, shall be vacated and voided, except liens created by the banking board while in possession and further excepting liens or security interests obtained by the federal reserve bank;

(b) Any transfer of an asset of the state bank made after or in contemplation of its insolvency, with intent to effect a preference, shall be voided.

(5) With the approval of the banking board, the commissioner may borrow money in the name of the state bank and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the commissioner's possession of a state bank and of its reorganization or liquidation shall be defrayed from the assets thereof.

**Source:** L. 2003: Entire article added with relocations, p. 1101, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-102 as it existed prior to 2003.

**11-103-803. Reorganization plan.** (1) A plan of reorganization shall not be prescribed under this code unless:

(a) The plan is feasible and fair to all classes of depositors, creditors, and stockholders;

(b) The aggregate face amount of the interest accorded to any class of depositors, creditors, or stockholders under the plan does not exceed the value of the assets upon liquidation, less the full amount of the claims of all prior classes, subject to any fair adjustment for new capital that any class will pay in under the plan;



(c) The plan provides for the issuance of capital stock and, if necessary, debentures and other securities and instruments in an amount that will comply with the rules promulgated by the banking board;

(d) Any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange;

(e) The plan assures the removal of any director, officer, or employee responsible for any unsound or unlawful action or the existence of an unsound condition;

(f) Any merger or consolidation provided by the plan conforms to the requirements of this code.

(2) If, in the course of reorganization, supervening conditions render the plan unfair or its execution impractical, the commissioner, upon approval of the banking board, may modify the plan or liquidate the institution. Any such action shall be taken by order of the banking board upon appropriate notice.

**Source: L. 2003:** Entire article added with relocations, p. 1103, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-103 as it existed prior to 2003.

**11-103-804. Liquidation by commissioner - procedure.** (1) In liquidating a state bank, the commissioner may exercise any power thereof, but the commissioner shall not, without the approval of the court in which notice of possession has been filed:

(a) Sell any asset of the bank having a value in excess of five hundred dollars;

(b) Compromise or release any claim if the amount of the claim exceeds five hundred dollars, exclusive of interest;

(c) Make any payment on any claim, other than a claim upon an obligation incurred by the commissioner, before preparing and filing a schedule of the commissioner's determinations in accordance with this code.

(2) Within six months after the commencement of liquidation, the commissioner may, by his or her election, terminate any executory contract for services or advertising to which the state bank is a party, or any obligation of the bank as a lessee. A lessor who receives at least sixty days' notice of the commissioner's election to terminate the lease shall have no claim for rent, other than rent accrued to the date of termination, nor for damages for such termination.

(3) As soon after the commencement of liquidation as is practicable, the commissioner shall take the necessary steps to terminate all fiduciary positions held by the state bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

(4) The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of their claims shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of national banks.

(5) As soon after the commencement of liquidation as is practicable, the commissioner shall send notice of the liquidation to each known depositor, creditor, and lessee of a safe deposit box and bailor of property held by the bank at the address shown on the books of the institution. The notice shall also be published in a newspaper of general circulation in the county in which the institution is located once a week for three successive weeks. The commissioner shall send with each notice a statement of the amount shown on the books of the institution to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee, or in a safe deposit box, be withdrawn by the person entitled thereto and the claim of a depositor or creditor, if the amount claimed differs from that stated in the notice to be due, be filed with the commissioner before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(6) Safe deposit boxes, the contents of which have not been removed before the date specified, shall be opened by the commissioner. Sealed packages containing the contents of

such box, with a certificate of inventory of contents, together with any unclaimed property held by the bank as bailee and certified inventories thereof, shall be held by the commissioner for six years unless sooner claimed by the person entitled thereto. After six years the commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred and disposed of in accordance with the provisions of subsection (11) of this section.

(7) Within six months after the last day specified in the notice for the filing of claims, or within such longer period as may be allowed by the court in which notice of possession has been filed, the commissioner shall:

- (a) Reject any claim if he or she doubts the validity thereof;
- (b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of such claim under this code;
- (c) Prepare a schedule of the commissioner's determinations for filing in the court in which notice of possession was filed;
- (d) Notify each person whose claim has not been allowed in full and publish once a week for three successive weeks, in a newspaper of general circulation in the county in which the institution is located, a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the commissioner will file the schedule in court.

(8) Within twenty days after the filing of the commissioner's schedule, any creditor, depositor, or stockholder may file an objection to any determination made that adversely affects such objector. Any objections so filed shall be heard and determined by the court upon such notice to the commissioner and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing the schedule, the commissioner may, from time to time, make partial distribution to the holders of claims that are undisputed or have been allowed by the court if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the commissioner shall make final distribution.

(9) (a) On liquidation of a state bank, after payment of federal deposit insurance, claims for payment have the following priority:

- (I) Obligations incurred by the commissioner, fees and assessments due to the division, and expenses of liquidation, all of which may be covered by a proper reserve of funds;
- (II) Claims of depositors having an approved claim against the general liquidating account of the bank;
- (III) Claims of general creditors having an approved claim against the general liquidating account of the bank;
- (IV) Claims otherwise proper that were not filed within the time prescribed by this code;
- (V) Approved claims of subordinate creditors; and
- (VI) Claims of stockholders of the bank.

(b) On liquidation of a state bank, after payment of federal deposit insurance, claims by governmental units for payment of uninsured deposits collateralized pursuant to the "Public Deposit Protection Act of 1975", article 10.5 of this title, shall be governed by the provisions of said article. Claims by governmental units for payment of uninsured deposits not collateralized pursuant to article 10.5 of this title shall have the same priority assigned to depositors under subparagraph (II) of paragraph (a) of this subsection (9).

(10) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(11) Unclaimed funds remaining after completion of the liquidation shall be retained for six years by the commissioner unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the treasury of the county in which the bank is located. The county treasurer and his or her successors shall hold such money in trust for a period of six years, unless the same is sooner paid out to the beneficial owner or owners thereof, or a suit is instituted to recover such money or a portion thereof. Any money remaining in said fund six years after the same is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of



the county, and all rights of the former beneficial owners therein to recover the same shall be forever barred.

(12) When the assets have been distributed in accordance with this code, the commissioner shall file an account with the court. Upon approval thereof, the commissioner shall be relieved of liability in connection with the liquidation, and shall cancel the charter.

**Source:** L. 2003: Entire article added with relocations, p. 1104, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-104 as it existed prior to 2003.

**11-103-805. Federal deposit insurance corporation or successor as liquidator.**

(1) The federal deposit insurance corporation, created by section 12B of the "Federal Reserve Act", as amended, or its successor is authorized to act without bond as liquidator of any banking institution, the deposits in which are to any extent insured by said corporation or its successor pursuant to section 11-103-802.

(2) Pursuant to section 11-103-802, the commissioner, upon order of the banking board, shall tender to said corporation or its successor the appointment as liquidator of such banking institution.

(3) After being notified in writing of the acceptance of such an appointment, the commissioner shall file in the office of the clerk and recorder in the county in which the bank is situated a certificate evidencing the appointment of the federal deposit insurance corporation or its successor. Upon such an appointment, the possession of all the assets, business, and property of such bank of every kind and nature, wheresoever situated, shall be deemed transferred from such bank and the banking board to the federal deposit insurance corporation or its successor. Without the execution of any instruments of conveyance, assignment, transfer, or endorsement, the title to all such assets and property shall be vested in the federal deposit insurance corporation or its successor, and the banking board and the commissioner shall be forever thereafter relieved from all responsibility and liability in respect to the liquidation of such bank; except that the banking board may retain jurisdiction over and responsibility for liquidation of eligible collateral pledged pursuant to the "Public Deposit Protection Act", article 10.5 of this title, to secure public deposits not insured by the federal deposit insurance corporation or its successor.

(4) If the corporation or its successor accepts said appointment, it has all the powers and privileges provided by the laws of this state with respect to the liquidation of a banking institution, its depositors, and other creditors.

(5) (a) When a state bank is liquidated, after payment of federal deposit insurance, claims for payment shall have the following priority:

(I) Obligations incurred by the banking board, fees and assessments due to the division of banking, and expenses of liquidation, all of which may be covered by a proper reserve of funds;

(II) Claims of depositors having an approved claim against the general liquidating account of the bank;

(III) Claims of general creditors having an approved claim against the general liquidating account of the bank;

(IV) Claims otherwise proper that were not filed within the time prescribed by this code;

(V) Approved claims of subordinate creditors; and

(VI) Claims of stockholders of the bank.

(b) When a state bank is liquidated, after payment of federal deposit insurance, claims of official custodians of public funds for payment of uninsured public funds pursuant to the "Public Deposit Protection Act", article 10.5 of this title, shall be governed by the provisions of this subsection (5). In the event that the state bank holds collateral that is pledged for the safekeeping and protection of uninsured public funds on deposit pursuant to article 10.5 of this title, such collateral shall be considered to be held in trust on behalf of the official custodian, and the liquidator shall not use such collateral to pay any claim or liability other than that of the official custodian until all claims for uninsured public funds have been paid. In the event that such collateral is insufficient to pay all claims made by

official custodians, the payment of such claims shall be made according to a pro rata formula. Claims by official custodians for payment of uninsured deposits not collateralized pursuant to article 10.5 of this title shall have the same priority as that assigned to depositors under subparagraph (II) of paragraph (a) of this subsection (5).

**Source: L. 2003:** Entire article added with relocations, p. 1106, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-105 as it existed prior to 2003.

**Cross references:** For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

#### ANNOTATION

**Annotator's note.** Since § 11-103-805 is similar to § 11-5-105 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**Regulatory exclusion contained in directors' and officers' liability insurance policy** is contrary to the public policy expressed in state banking law and undermines the authority and

responsibility that such law vests in the FDIC as liquidator of a state-chartered insolvent bank for protecting the interests of the bank's depositors, creditors, and stockholders by making equitable payment to them out of the bank's assets as compensation for losses caused by the negligence and breach of fiduciary duty of the bank's former directors. *FDIC v. Am. Cas. Co.*, 841 P.2d 1285 (Colo. 1992).

**11-103-806. Assets sold or pledged as security.** (1) With respect to any banking institution closed on account of inability to meet the demands of its depositors or by action of the banking board or by action of its directors or in the event of its capital inadequacy or suspension, the liquidator of such institution may borrow from the federal deposit insurance corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, but, if said corporation is acting as such liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Upon the order of a court of record of competent jurisdiction, all or any part of the assets of such institution may be sold.

(2) The provisions of this section shall not be construed to limit the power of any banking institution, the commissioner, or the liquidators to pledge or sell assets in accordance with any existing law.

**Source: L. 2003:** Entire article added with relocations, p. 1107, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-106 as it existed prior to 2003.

**11-103-807. Enforcement of directors' liability.** Among its other powers, the federal deposit insurance corporation, in the performance of its powers and duties as such liquidator, has the right and power, upon the order of a court of record of competent jurisdiction, to enforce the individual liability of the directors of any such banking institution.

**Source: L. 2003:** Entire article added with relocations, p. 1108, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-107 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-103-807 is similar to § 11-5-107 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant

cases construing that provision have been included in the annotations to this section.

**This section applies only when the FDIC is acting as a liquidator or receiver.** It did not



apply after the court substituted FDIC-corporate as plaintiff in place of FDIC-receiver. *FDIC v. Isham*, 777 F. Supp. 828 (D. Colo. 1991).

**General statutory mandate to collect and distribute assets of failed banks** is insufficient to establish a public policy regulating the nature and extent of insurance coverage on claims of the bank such as to render an exclusion of claims asserted by the federal deposit insurance corporation void as against public policy. *FDIC v. Bowen*, 824 P.2d 41 (Colo. App. 1991).

**Regulatory exclusion contained in directors' and officers' liability insurance policy** is

contrary to the public policy expressed in state banking law and undermines the authority and responsibility that such law vests in the FDIC as liquidator of a state-chartered insolvent bank for protecting the interests of the bank's depositors, creditors, and stockholders by making equitable payment to them out of the bank's assets as compensation for losses caused by the negligence and breach of fiduciary duty of the bank's former directors. *FDIC v. Am. Cas. Co.*, 841 P.2d 1285 (Colo. 1992).

**11-103-808. Emergency grant of new charter.** In addition to powers regarding liquidation or reorganization, the banking board may, in the interest of protecting the public and the depositors of a closed state bank or national banking association with its principal office in this state, issue a new bank charter to qualified individuals for the same location as the closed bank, contingent upon the new bank assuming full liability for such deposits of the closed bank as may be transferred to it. Under such conditions, a new charter may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this code.

**Source:** L. 2003: Entire article added with relocations, p. 1108, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-108 as it existed prior to 2003.

**11-103-809. Emergency grant of branch facility - legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the economy of this state and its communities and the public interest will be better served by permitting financial institutions, as defined in section 11-101-401 (35), to operate at the same location as a closed bank.

(2) (a) In addition to powers regarding liquidation or reorganization, the banking board, in the interest of protecting the public and the depositors of a closed bank or national banking association with its principal place of business in this state, may issue an emergency grant of authority to another financial institution, which financial institution has its principal place of business in this state and which financial institution has acquired assets and liabilities of the closed bank, to operate a branch facility at the same location as the closed bank, or within a one-half mile radius of the location of the nearest point on the boundary of the premises of the closed bank's place of business, contingent upon the bank assuming full liability for such deposits of the closed bank as may be transferred to it. Such branch facility shall not be located at any other location if such other location is within three hundred feet of the boundary of the premises of another bank unless the other bank consents to a closer location.

(b) Under such conditions, the authority to operate the branch facility may be issued summarily without the publication of notice; without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this code.

(3) No financial institution may hold, acquire, control, or operate more than two branch facilities pursuant to this section; however, if the banking board determines that, because of this limitation, no qualified financial institution can bid on the assets and liabilities of the closed bank, the banking board may authorize and issue such an emergency grant to another financial institution, in excess of such limit, but in no event more than two additional branch facilities.

(4) Notwithstanding any other provision of this section, a branch facility operated pursuant to this section on or before August 1, 1991, may continue to operate in perpetuity as a branch without being subject to any percentage limitation on branches as set forth in section 11-105-602.

**Source: L. 2003:** Entire article added with relocations, p. 1108, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-5-109 as it existed prior to 2003.

**11-103-810. Preapproved shelf charter.** The board may preapprove a shelf charter for a new bank to qualified individuals, contingent upon the new bank completing all specified requirements and purchasing the assets and assuming the liabilities of a bank in receivership as the federal deposit insurance corporation may determine, if the proposed bank has its principal place of business in Colorado and has assets and liabilities held in receivership by the federal deposit insurance corporation. The shelf charter may be preapproved and summarily issued without publication of a notice, without the holding of a public hearing, and without complying with all of the other provisions and procedures specified in this code. Upon federal deposit insurance corporation approval of the purchase and assumption by the new bank, the final charter approval may be granted, together with final approval of deposit insurance by the federal deposit insurance corporation. If the bid is not accepted by the federal deposit insurance corporation, the charter remains on the shelf for up to eighteen months. During that time, the charter may be used for other bids.

**Source: L. 2009:** Entire section added, (HB 09-1053), ch. 159, p. 688, § 4, effective August 5.

## ARTICLE 104

### Holding Companies

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

#### PART 1

11-104-202.

Acquisition of control of bank holding companies and banks by bank holding companies in different states - interstate banking and branching.

#### HOLDING COMPANIES GENERALLY

11-104-101. Prohibition on acquisition or control - limited service banking institutions.

11-104-203.

Authority of banking board to enforce provisions of article.

#### PART 2

#### ACQUISITION OF CONTROL OF BANKS AND BANK HOLDING COMPANIES

11-104-201. Legislative declaration.

#### PART 1

#### HOLDING COMPANIES GENERALLY

**11-104-101. Prohibition on acquisition or control - limited service banking institutions.** Notwithstanding any other provision of law, no bank holding company or other company may acquire or control any banking institution located in this state that does not both accept deposits that the depositor has a legal right to withdraw on demand and engage in the business of making commercial loans.

**Source: L. 2003:** Entire article added with relocations, p. 1109, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6.3-101 (2) as it existed prior to 2003.



## PART 2

ACQUISITION OF CONTROL OF BANKS  
AND BANK HOLDING COMPANIES

**Law reviews:** For article, "Interstate Banking Comes to Colorado", see 17 Colo. Law. 1089 (1988).

**11-104-201. Legislative declaration.** (1) The general assembly finds, determines, and declares that, in authorizing expansion of interstate banking to this state, primary consideration should be given to providing positive benefits for the people of this state; to affording protection to bank depositors in this state; to enhancing the opportunity of the people of this state to receive services provided by banks and bank holding companies; and to setting forth the standards under which out-of-state bank holding companies may acquire or control Colorado banks and bank holding companies.

(2) In order to comply with the considerations set forth in subsection (1) of this section with respect to interstate branch banking, the general assembly finds that it is in the best interests of the citizens of this state to declare that interstate branching in Colorado is prohibited prior to June 1997. The general assembly further finds and declares that de novo interstate branching in this state is expressly prohibited and that interstate branching through the acquisition of a branch of an insured financial institution without the acquisition of such financial institution that has been in operation for at least five years at the time of acquisition is expressly prohibited.

**Source: L. 2003:** Entire article added with relocations, p. 1109, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6.4-101 as it existed prior to 2003.

**11-104-202. Acquisition of control of bank holding companies and banks by bank holding companies in different states - interstate banking and branching.** (1) A Colorado bank holding company may acquire control of out-of-state bank holding companies and out-of-state banks; and, subject to the limitations of subsections (2) to (6) of this section, an out-of-state bank holding company may acquire control of Colorado financial institutions.

(2) An out-of-state bank holding company may not acquire control of, or acquire all or substantially all of the assets of, a Colorado depository institution having its principal place of business in Colorado unless such depository institution has been in operation for at least five years at the time of the acquisition of control. An out-of-state bank holding company acquiring control of a Colorado bank holding company, industrial bank holding company, or thrift holding company may acquire control of any Colorado depository institution having its principal place of business in Colorado controlled by the Colorado bank holding company, industrial bank holding company, or thrift holding company even though such depository institution has been in operation for less than five years.

(3) A Colorado bank holding company may acquire control of any Colorado bank by organizing or seeking to charter de novo a Colorado bank.

(4) A bank holding company may not acquire control of any financial institution if such acquisition of control will result, at the time of such acquisition, in the bank holding company controlling more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purpose of this subsection (4), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency.

(5) A bank holding company may not acquire control of a Colorado financial institution unless, immediately before such acquisition, such bank holding company has such capital as the banking board may require by rule.

(6) Interstate branching through the acquisition of a branch of an insured financial institution without the acquisition of such financial institution is expressly prohibited. De

novo interstate branching is expressly prohibited. Deposit production offices are expressly prohibited.

(7) No bank holding company may acquire control of any financial institution that controls a Colorado financial institution except in accordance with the provisions of this section and with prior approval of the federal reserve board under section 3(a) of the federal "Bank Holding Company Act", 12 U.S.C. sec. 1842(a).

(8) A bank or bank holding company that intends to acquire control of any Colorado financial institution or to conduct interstate branching in Colorado shall provide the banking board with the name or names under which it proposes to conduct the business of such bank, bank holding company, or branch. The bank or bank holding company shall not be eligible to conduct interstate branching or make any such acquisition if the proposed name is either:

(a) Identical to or deceptively similar to the name of any existing Colorado financial institution; except that this paragraph (a) shall not apply if the bank or bank holding company obtains express written consent of the affected existing Colorado financial institution; or

(b) Likely to cause the public to be confused, deceived, or mistaken.

(9) Concurrently with the filing of its application or notice with the appropriate federal regulatory agency concerning the acquisition or control of a Colorado financial institution, or concerning an interstate branch, a bank or bank holding company shall file a copy of said application or notice with the banking board, which may submit advisory comments to the federal regulatory agency.

(10) No bank or bank holding company may conduct interstate branching in Colorado or acquire control, directly or indirectly, of any Colorado financial institution without first obtaining a certificate from the banking board certifying that such branch or acquisition complies with the provisions of this article. Such certificate shall accompany any advisory comments submitted by the banking board to the appropriate federal regulatory agency pursuant to subsection (9) of this section. If the banking board refuses to issue a certificate pursuant to this subsection (10), such refusal and the reasons therefor shall be submitted pursuant to subsection (9) of this section to the appropriate federal regulatory agency with advisory comments. The banking board shall act on any application or notice filed pursuant to subsection (9) of this section and shall issue or refuse to issue the certificate required by this subsection (10) within ninety days after the filing of any such application.

**Source: L. 2003:** Entire article added with relocations, p. 1110, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6.4-103 as it existed prior to 2003.

**11-104-203. Authority of banking board to enforce provisions of article.** (1) Any bank holding company controlling any other bank holding company or bank pursuant to the provisions of this code in this state shall, for purposes of enforcing the provisions of this article, be subject to the jurisdiction of the banking board with respect to its operations and affairs in the state of Colorado. The banking board may utilize the applicable powers conferred by this code to carry out the duties imposed by this section.

(2) The banking board shall have the authority to examine the records and affairs of any bank holding company filing an application to acquire control of a Colorado bank or Colorado bank holding company pursuant to this article. The banking board shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath, and examine any person under oath in connection with any subject relating to a duty imposed upon, or power vested in, the banking board pursuant to this section. In case of a refusal of any person to comply with a lawful subpoena or order of the banking board issued pursuant to this section, upon proper petition by the banking board to the district court, the court shall require compliance therewith, and further refusal shall be punishable as contempt of court.

(3) The banking board may, after notice and hearing pursuant to article 4 of title 24, C.R.S., order any person to cease and desist from violating any provision of this article.



(4) The banking board may, after notice and hearing pursuant to article 4 of title 24, C.R.S., order any bank holding company controlling any other bank holding company or any bank in this state in violation of the provisions of this article to divest its interest in any such bank holding company or bank.

**Source: L. 2003:** Entire article added with relocations, p. 1111, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6.4-104 as it existed prior to 2003.

## ARTICLE 105

### Banking Practices

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

#### PART 1

##### GENERAL PROVISIONS

- 11-105-101. Branch banks and practices prohibited.
- 11-105-102. Accounts and interest.
- 11-105-103. Saturday closing - notice - effect.
- 11-105-104. Minor or institutional deposits.
- 11-105-105. Joint deposits - right of survivor.
- 11-105-106. Final adjustment - statement of account.
- 11-105-107. Adverse claim deposits.
- 11-105-108. Transmitting money - foreign exchange.
- 11-105-109. Temporary closing of banks - when.
- 11-105-110. Disclosure of information pursuant to legal process.
- 11-105-111. Trust account - limited documentation required - certificate of trust.
- 11-105-112. Entity account - certificate of existence and authority - definitions.

#### PART 2

##### ELECTRONIC FUNDS TRANSFERS

- 11-105-201. Short title. (Repealed)
- 11-105-202. Legislative declaration. (Repealed)
- 11-105-203. Conditions of authority. (Repealed)
- 11-105-204. Conditions for retailers. (Repealed)
- 11-105-205. Powers of the banking board. (Repealed)
- 11-105-206. Jurisdiction of the district court. (Repealed)
- 11-105-207. Fees. (Repealed)
- 11-105-208. Consumer protection.
- 11-105-209. Permissive sharing among dis-

similar institutions. (Repealed)

- 11-105-210. No operation by bank employees. (Repealed)

#### PART 3

##### RESERVES, LOANS, AND INVESTMENTS

- 11-105-301. Reserves against deposits.
- 11-105-302. Loans, acceptances, investments, and letters of credit.
- 11-105-303. Corporate powers - interest and charges.
- 11-105-304. Bank investments - customers' orders.
- 11-105-305. Acceptances - letters of credit.

#### PART 4

##### PROPERTY, SALES, BORROWING, AND SIGNATURE GUARANTY

- 11-105-401. Acquisition of property to satisfy indebtedness.
- 11-105-402. Banking property - acquisition.
- 11-105-403. Sale of assets.
- 11-105-404. Pledge of assets.
- 11-105-405. Signature guaranty.

#### PART 5

##### SAFE DEPOSIT AND SAFEKEEPING FACILITIES

- 11-105-501. Safe deposit boxes - leasing and subsidiary company.
- 11-105-502. Access by fiduciaries.
- 11-105-503. Lease to minor.
- 11-105-504. Death of lessee - procedure.
- 11-105-505. Adverse claims to safe deposit box.
- 11-105-506. Annual fees.

## PART 6

FINANCIAL INSTITUTIONS, OPERATION  
OF BRANCHES, ORGANIZATIONAL AND  
OPERATIONAL EQUALITY

11-105-601. Legislative declaration.  
11-105-602. Financial branches allowed -  
conversion of financial insti-

11-105-603.

11-105-604.

11-105-605.

11-105-606.

tutions to branches - acquisitions.  
Financial institutions - common

powers and limitations.  
Subsidiary depository institu-

tions as agent.  
Rule-making by banking board

and financial services board.  
Notice of branch closing.

## PART 1

## GENERAL PROVISIONS

**11-105-101. Branch banks and practices prohibited.** (1) Any bank, upon application to and approval by the banking board, may operate one or more loan production offices as defined by the banking board.

(2) For purposes of this subsection (2), "elementary school" means any public or private school with students in kindergarten through eighth grade. A bank that both opens accounts and accepts students' deposits at elementary schools in conjunction with other educational programs presented by the bank is not engaged in branch banking as defined in section 11-101-401 (10). Any bank establishing a location in an elementary school pursuant to this section shall receive the prior approval of the banking board. Approval shall be granted if the program is predominantly educational.

(3) Any other facility, agency, or paying or receiving station operated by any bank or agent shall constitute a branch within the meaning of this section. Any facility authorized by the United States treasury department shall not be subject to the limitations of this section.

(4) As authorized under section 10-2-601 (2), C.R.S., any bank may, pursuant to federal law or under such rules as may be prescribed by the banking board and subject to rules promulgated by the commissioner of insurance concerning the sale of insurance by financial institutions as provided in section 10-2-601, C.R.S., as such laws and rules are applicable to the bank, depending upon whether such bank is a national bank or a state bank, act as the agent for any fire, life, or other insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For services so rendered, such bank may receive such fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent. For purposes of this subsection (4), "bank" shall have the same meaning as set forth in section 11-101-401 (3).

(5) Except as provided in the federal "Gramm-Leach-Bliley Act", as amended, Pub.L. 106-102, 113 Stat. 1388, it is unlawful for a bank or an officer, director, employee, or affiliate of a bank to engage in the business of issuing, floating, underwriting, distributing, or promoting the sale of stocks, bonds, or other securities or to be an officer, trustee, director, employee, stockholder, or partner of any person engaged principally in any such business. Additional exceptions to this section shall be securities issued or guaranteed as to principal and interest by the United States or any agency thereof or by a state or territory of the United States or a subdivision, instrumentality, or public authority organized under the laws of such state or territory or pursuant to an interstate compact between two or more states.

(6) Except as expressly permitted in this code, a state bank shall not assume liability as an insurer, nor shall it become a guarantor or endorser of any security instrument or obligation in which, or with respect to which, it has no property interest.

(7) No officer, director, employee, or agent of a state bank shall maintain, or authorize the maintenance of, any account of the bank in a manner that, to his or her knowledge, does not conform to the requirements prescribed by this code or by the commissioner or the banking board.

(8) No officer, director, employee, or agent of a state bank shall obstruct, or endeavor to obstruct, a lawful examination of the institution by an officer or employee of the division.



**Source:** L. 2003: Entire article added with relocations, p. 1112, § 3, effective July 1. L. 2004: (1) amended, p. 323, § 5, effective April 7. L. 2007: (5) amended, p. 2021, § 14, effective June 1.

**Editor's note:** This section is similar to former § 11-6-101 as it existed prior to 2003.

### ANNOTATION

**Law reviews.** For article, "Impact of the Uniform Commercial Code on Colorado Law", see 42 Den. L. Ctr. J. 67 (1965). For article, "Judicial Gymnastics Open the Door for Branch Banking", see 16 Colo. Law. 1959 (1987). For article, "Recent Developments Permitting Banks to Engage in the Insurance Business", see 20 Colo. Law. 35 (1991). For article, "Colorado's Version of Branch Banking", see 20 Colo. Law. 1611 (1991).

**Annotator's note.** Since § 11-105-101 is similar to § 11-6-101 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**This section clearly prohibits banks from conducting business at more than one location.** It likewise implies that the duly granted charter of a bank cannot be used as a grant of authority to do business at more than the single place of business. Hence, it is also implied that an approved bank having a duly granted charter cannot apply for another charter to do business under a second charter at a second place of business. *Peoples Bank v. Banking Bd.*, 164 Colo. 564, 436 P.2d 681 (1968).

**If banks do business as one, then they are branches.** To establish that a bank is a branch it must be shown, that, in substance, one is doing business through the instrumentality of the other, or vice versa, in the same way as if the institutions were one. *Peoples Bank v. Banking Bd.*, 164 Colo. 564, 436 P.2d 681 (1968).

**The general assembly did intend to permit what is known as "affiliate banks",** whereby,

for example, modern and progressive bookkeeping and accounting procedures may be employed by "smaller" banks through the contractual use of facilities of a "larger" bank, thus reducing overhead costs to both the smaller and the larger banks and thereby passing along larger profits to stockholders and less expensive charges to customers without the abuses, risks, and problems of supervision often involved in branch banking. *Peoples Bank v. Banking Bd.*, 164 Colo. 564, 436 P.2d 681 (1968).

**An electronic banking facility is prohibited branch banking in all its functions.** State ex rel. *State Banking Bd. v. First Nat'l Bank*, 540 F.2d 497 (10th Cir. 1976), cert. denied, 429 U.S. 1091, 97 S. Ct. 1102, 51 L. Ed.2d 537 (1977).

**Standing to challenge actions of comptroller of the currency.** The interest of state administrative officials in enforcing branch banking prohibitions to maintain competitive equality between state and national banks has been held sufficient to confer standing to challenge the actions of the comptroller of the currency. State ex rel. *State Banking Bd. v. First Nat'l Bank*, 394 F. Supp. 979 (D. Colo. 1975), aff'd on this point, 540 F.2d 497 (10th Cir. 1976), cert. denied, 429 U.S. 1091, 97 S. Ct. 1102, 51 L. Ed.2d 537 (1977).

**Letter of credit to secure bond not guaranty.** An irrevocable letter of credit issued by a state bank to secure a supersedeas bond is not ultra vires as constituting a guaranty, contrary to subsection (4). *United Bank v. Quadrangle, Ltd.*, 42 Colo. App. 486, 596 P.2d 408 (1979).

**11-105-102. Accounts and interest.** (1) A state bank may maintain demand, savings, and time deposit accounts and any type of account that a national bank may maintain.

(2) Savings deposits shall be repaid to the depositors under such rules as the board of directors of the state bank shall, from time to time, prescribe. Such rules shall be conspicuously exposed in some place accessible and visible in the business office of the state bank. No alterations that may at any time be made in the rules shall in any manner affect the rights of a depositor within the contract period in respect to deposits made previous to such alteration.

(3) The banking board may by rule establish the maximum annual rate of interest that a state bank may pay on any type of deposit or account. In the absence of such rule, a state bank shall be subject only to applicable federal law in the payment of interest.

**Source:** L. 2003: Entire article added with relocations, p. 1113, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-102 as it existed prior to 2003.

## ANNOTATION

**Annotator's note.** Since § 11-105-102 is similar to § 11-6-102 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant

case construing that provision has been included in the annotations to this section.

**Applied in** Otero Sav. & Loan Ass'n v. Bd. of Governors, 497 F. Supp. 370 (D. Colo. 1980).

**11-105-103. Saturday closing - notice - effect.** Any state bank or trust company, national banking association, or federal reserve bank may, by brief notation on its front door, fully dispense with, or restrict to such extent as it may determine, the hours within which it will be open for business on all, or less than all, Saturdays. However, the fact that a bank remains open for business on all, or less than all, Saturdays shall not make that day, or any part thereof, a banking day for the purposes of section 4-4-104 (a) (3), C.R.S., of the "Uniform Commercial Code". Any plan so adopted by any such organization may be changed by it from time to time in its discretion. Every Saturday on which any such state bank, national banking association, or federal reserve bank, in observance of such notation, is not open for business shall be, with respect to the particular organization, the equivalent of a legal holiday, as specified in section 24-11-101, C.R.S. Any act authorized, required, or permitted to be performed at, by, or with respect to such organization on a Saturday that is for it a holiday may be performed on the next succeeding business day, notwithstanding the provisions of any other law of this state to the contrary, and no liability or loss of right of any kind shall result from such delay. The provisions of this section shall not operate to invalidate or prohibit the doing on any Saturday of any such act by any person or organization referred to in this section.

**Source: L. 2003:** Entire article added with relocations, p. 1114, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-103 as it existed prior to 2003.

**11-105-104. Minor or institutional deposits.** (1) A bank may operate a deposit account for a minor with the same effect upon its liability as if the minor were of full age unless such minor's guardian or conservator files with the bank a certified copy of the order of a Colorado court having jurisdiction appointing him or her and directs otherwise.

(2) Subject to such rules, not in conflict with section 11-105-101, as the banking board may prescribe for the protection of depositors, a bank may contract with the proper authorities of any public or nonpublic elementary or secondary school or any public or charitable institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan.

**Source: L. 2003:** Entire article added with relocations, p. 1114, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-104 as it existed prior to 2003.

**11-105-105. Joint deposits - right of survivor.** Except as to accounts, which are defined in and which shall be paid as provided in article 15 of title 15, C.R.S., when a bank deposit in any bank transacting business in this state is made in the names of two or more persons payable to them or to any of them, such deposit, or any part thereof or interest thereon, may be paid to any one of said persons whether the others are living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient discharge to the paying bank from all said persons and their heirs, executors, administrators, and assigns; such deposit shall be deemed, so far as the rights and liabilities of the bank are concerned, to be owned by said persons in joint tenancy with the right of survivorship, but the bank has the right of setoff against such deposit, to the extent thereof, to collect a debt owed to the bank by any joint depositor, which right shall not be affected by death.

**Source: L. 2003:** Entire article added with relocations, p. 1114, § 3, effective July 1.



**Editor's note:** This section is similar to former § 11-6-105 as it existed prior to 2003.

## ANNOTATION

**Law reviews.** For article, "Express Trusts in Colorado", see 10 Rocky Mt. L. Rev. 9 (1937). For article, "Joint Tenancy in Colorado", see 26 Dicta 313 (1949). For article, "Simple Devices for the Transfer of Assets Without Administration", see 27 Dicta 277 (1950). For article, "Election to Take the Statutory Share", see 29 Rocky Mt. L. Rev. 506 (1957). For article, "Set-off and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988).

**Annotator's note.** Since § 11-105-105 is similar to § 11-6-105 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, and to repealed CSA, C. 18, § 45, relevant cases construing those provisions have been included in the annotations to this section.

**At common law a deposit payable to one or more persons, with an express right of survivorship, established a joint tenancy**, subject to certain exceptions where the apparent intent of the depositor might be rebutted. Houle v. McMillan, 83 Colo. 216, 263 P. 409 (1928).

**This section goes beyond the common law** and expressly provides that a deposit in the names of two or more persons payable to them or to any of them shall be deemed to be owned by said persons in joint tenancy with the right of survivorship. Houle v. McMillan, 83 Colo. 216, 263 P. 409 (1928).

**The general assembly has preempted the field and declared the public policy** with respect to the disposition of property held in joint tenancy. Smith v. Greenburg, 121 Colo. 417, 218 P.2d 514 (1950).

**This section is expressly limited by its terms** to delineate rights and liabilities only as between a bank and its depositors. In re Estate of Beasley, 40 Colo. App. 347, 578 P.2d 662 (1978).

**Rights are fixed and vested at time of creation of tenancy.** In a joint tenancy the rights are fixed and vested in the joint tenants at the time of the creation of the joint tenancy under the statute. Smith v. Greenburg, 121 Colo. 417, 218 P.2d 514 (1950).

**Generally any joint owner may withdraw the entire balance.** This section changes the usual law pertaining to joint ownership and pro-

vides that, in the case of joint bank accounts, any joint owner may withdraw for his own purposes the entire property. In re Estate of Lee v. Graber, 170 Colo. 419, 462 P.2d 492 (1969).

**Where property is held in joint tenancy under this section by a husband and wife and the husband kills his wife and commits suicide**, the husband's estate is entitled to the entire property as there is no exception to prevent payment to a surviving tenant on account of his misconduct toward the tenant who has predeceased him. Smith v. Greenburg, 121 Colo. 417, 218 P.2d 514 (1950).

**Establishing a joint bank account providing for the right of survivorship does not constitute an inter vivos gift ipso facto.** Albers v. Young, 119 Colo. 37, 199 P.2d 890 (1948).

**Nothing in this section prevents parties from making express contracts with relation to their several interests in moneys placed on deposit in their joint names.** Urbancich v. Jersin, 123 Colo. 88, 226 P.2d 316 (1950).

**Property in joint account is subject to surrender by bank to satisfy IRS levy against individual depositor.** Fair v. Wise, 753 P.2d 780 (Colo. App. 1987).

**A bank has a statutory right to set off the funds of a joint deposit** against a debt owed it by one of the depositors. Burgess v. First Nat'l Bank, 31 Colo. App. 67, 497 P.2d 1035 (1972); In re Estate of Sharpe v. Metro. Nat'l Bank, 31 Colo. App. 511, 503 P.2d 1043 (1972); Mancuso v. United Bank of Pueblo, 796 P.2d 7 (Colo. App. 1990), aff'd in part and rev'd in part on other grounds, 818 P.2d 732 (Colo. 1991).

**Bank has no duty to inform depositor in joint tenancy account that it has right to set-off against entire amount of account for debt owed by just one of the depositors.** Mancuso v. United Bank of Pueblo, 796 P.2d 7 (Colo. App. 1990), aff'd in part and rev'd in part on other grounds, 818 P.2d 732 (Colo. 1991).

**No information given to bank about special needs of one depositor when joint account opened, so "special account" not established as a matter of law.** Mancuso v. United Bank of Pueblo, 796 P.2d 7 (Colo. App. 1990), aff'd in part and rev'd in part on other grounds, 818 P.2d 732 (Colo. 1991).

**11-105-106. Final adjustment - statement of account.** (1) When a statement of account has been rendered by a bank to a depositor and accompanied by vouchers, if any, that are the basis for debit entries in such account, or when the depositor's passbook or savings account book has been written up by the bank, showing the condition of the depositor's account, and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of one year from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed. Such depositor shall

thereafter be barred from questioning the correctness of such account for any cause.

(2) Nothing in this section shall be construed to relieve the depositor from the duty of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty.

(3) A statement of account may be rendered to a depositor by mailing such statement, with supporting vouchers, if any, to such depositor's address as shown on the books of the bank.

**Source: L. 2003:** Entire article added with relocations, p. 1115, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-106 as it existed prior to 2003.

**11-105-107. Adverse claim deposits.** (1) Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person, or to securities or other property deposited by any person with the bank, shall not be effectual to cause said bank to recognize said adverse claimant, unless said adverse claimant shall also either procure a restraining order, injunction, or other appropriate process against and served upon said bank from a court of competent jurisdiction in an action instituted by said adverse claimant wherein the person to whose credit the deposit stands or for whose account the securities or other property are held is made a party and served with summons or shall comply with subsection (2) of this section.

(2) Such adverse claimant, in lieu of a court order, shall execute to said bank, in form and amount and with sureties acceptable to it, a bond indemnifying said bank from all liability, loss, damage, costs, and expenses, whether on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or on account of the delivery of said securities or other property to the adverse claimant or the refusal to comply with any order of the depositor of the securities or property held, as the case may be.

(3) This section shall not apply in any instance where the person to whose credit the deposit stands or for whose account the securities or other property is held, is a fiduciary designated as such by words indicating the deposit or other property is, or the securities are, held for the benefit of such adverse claimant, and the facts showing reasonable cause of belief on the part of said claimant that the fiduciary is about to misappropriate such deposit, securities, or other property are made to appear by the affidavit of such claimant.

**Source: L. 2003:** Entire article added with relocations, p. 1115, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-107 as it existed prior to 2003.

**11-105-108. Transmitting money - foreign exchange.** (1) A bank may accept money for transmission and may transmit money.

(2) A bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

**Source: L. 2003:** Entire article added with relocations, p. 1116, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-108 as it existed prior to 2003.

**11-105-109. Temporary closing of banks - when.** (1) Any bank doing business in this state may remain closed on any day on which, by reason of an occasion of national mourning or rejoicing or national or local emergency affecting the community in which such bank is located, the governor shall by proclamation request the people of the state or of said community to close their places of business.

(2) If the banking board is of the opinion that an emergency exists affecting banks located in the state or in any part thereof, it may authorize banks located in the area affected



by the emergency to close any or all of their offices, and it shall make public announcement of such authorization. In addition, if the banking board is of the opinion that an emergency exists that affects a particular bank or a particular office thereof, but not banks located in the area generally, it may authorize the particular bank or office so affected to close. As used in this subsection (2), the word "emergency" shall include any condition that may interfere with the conduct of the normal operations of, or the transportation of employees to or from, a bank or one or more offices thereof; or that poses an existing or imminent threat to the safety or security of bank personnel or property, including without limitation conditions arising by reason of fire, flood, windstorm, snowstorm, or other casualty, interruption of transportation or power facilities, war or other enemy action, riots, civil commotion, or other acts of lawlessness or violence.

(3) If the officers of a bank are of the opinion that conditions exist that pose an existing or imminent threat to the safety or security of bank personnel or property generally or at any one or more offices thereof, they may close the bank or the office affected by such threat, as the case may be, irrespective of whether the governor or the banking board has acted under this section. As used in this section, the word "officers" shall mean the person designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of this section or, in the absence of any such designation or the officer so designated, the president or any other officer currently in charge of the operations of the bank or of the office in question. A bank closing an office pursuant to this section shall give as prompt notice to the banking board of such action as conditions permit.

(4) Any bank or office thereof that is closed by action of the banking board under this section may remain closed until it declares that the emergency has ended. Any bank or office thereof that is closed by decision of the officers of the bank may remain closed until such officers determine that the threat has ended. In either event, any bank or office thereof may remain closed for such further time thereafter as may reasonably be required to reopen, but in any event not later than the normal time of opening on the next business day.

(5) Any day on which a bank remains closed and any day on which a bank or any one or more of its offices is closed during any part or all of its normal banking hours, by decision of the banking board or by decision of its officers, shall be, with respect to such bank, or if not all of its offices are closed, then with respect to those offices that are closed, the equivalent of a legal holiday, as specified in section 24-11-101, C.R.S., and any act authorized, required, or permitted to be performed at or by or with respect to such bank or such office, as the case may be, on such day may be performed on the next succeeding business day without any liability or loss of rights resulting from such delay.

**Source: L. 2003:** Entire article added with relocations, p. 1116, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-109 as it existed prior to 2003.

**11-105-110. Disclosure of information pursuant to legal process.** Any bank, savings and loan association, industrial bank, credit union, or any agent or employee of such financial institutions that makes a disclosure of records or information on the direction contained in a lawful notice, subpoena, written request, search warrant, grand jury subpoena, or other process issued by any governmental authority or by a court shall not be held civilly or criminally liable for such disclosure, nor shall the financial institution be held liable to the customer or any other person for such disclosure.

**Source: L. 2003:** Entire article added with relocations, p. 1117, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-6-113 as it existed prior to 2003.

**11-105-111. Trust account - limited documentation required - certificate of trust.**  
(1) For any deposit account that is opened with any bank transacting business in this state by one or more persons expressly acting as a trustee or trustees for one or more other named

person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the bank with a certificate of trust to evidence the trust relationship. The certificate of trust shall be an affidavit executed by any trustee and shall include the following:

- (a) The name of the trust;
- (b) The effective date of the trust;
- (c) The name and address of each trustee;
- (d) The name of each known successor trustee;
- (e) A statement that the trustee has authority or that the trustees have authority to open the account on behalf of the trust; and
- (f) Any other information that may be required by the bank, including an indemnification that is acceptable to the bank.

(2) If a bank decides to accept a certificate of trust pursuant to this section, the bank may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement.

(3) If a bank decides to accept a certificate of trust pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on the certificate of trust, the bank may withhold disposition of any funds on deposit in the account until receipt of one of the following:

- (a) An order by a court of competent jurisdiction directing the disposition of funds;
- (b) A newly executed certificate of trust created pursuant to this section from a person acting or purporting to act as a newly appointed successor trustee under the same trust; or
- (c) Other documentation that establishes to the satisfaction of the bank the manner in which the funds are to be administered or distributed.

(4) If a bank decides to accept a certificate of trust pursuant to this section, the bank shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) Nothing in this section shall obligate a bank to establish a deposit account for a trustee who refuses to furnish the bank with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a bank from requesting additional information in order to establish a deposit account for a trustee, including a request that the certificate of trust be executed by all trustees.

**Source: L. 2004:** Entire section added, p. 453, § 1, effective July 1.

### **11-105-112. Entity account - certificate of existence and authority - definitions.**

(1) For any deposit or loan account that is opened by one or more persons acting or purporting to act for or on behalf of an entity with any financial institution transacting business in this state, such person may provide the financial institution with a certificate to evidence the existence of the entity and the authority of such person to act for or on behalf of the entity with respect to the account. The certificate of existence and authority shall be an affidavit executed by such person and shall include the following, as applicable:

- (a) The name and mailing address of the entity;
- (b) The type of entity and the state, country, or other governmental authority under whose laws the entity was formed;
- (c) The organization date of the entity;
- (d) The name, mailing address, and office or other position held by the person executing the certificate; and

(e) A statement that the board of directors, managers, members, general partners, or other governing body of the entity opening the account has duly taken all action legally required to open the account in the name of the entity and the name, office, or other position of the person who has been duly authorized to engage in transactions with respect to the account, including any limitation that may exist upon the authority of such person to bind the entity and any other matters concerning the manner in which such person may deal with the account. If the deposit or loan is to be opened on behalf of an institution of higher



education, the statement shall be accompanied by a resolution certified by the secretary of the governing board.

(2) If a financial institution accepts a certificate of existence and authority pursuant to this section, the financial institution may open and administer the account in accordance with the information set forth therein and shall not be liable for so doing even if any such information is inaccurate, unless the financial institution has actual knowledge of such inaccuracy or knowledge sufficient to cause a reasonably prudent person to doubt the accuracy of such information.

(3) Nothing in this section shall be construed to prohibit a financial institution from requesting additional information or requiring other agreements in order to establish a deposit or loan account for an entity, including without limitation a resolution, certificate of good standing, trade name registration, request for taxpayer identification number, entity agreements, or documents or parts thereof evidencing the existence of the entity or the authority of the person executing the certificate, and an indemnification that is acceptable to the financial institution.

(4) As used in this section, unless the context otherwise requires:

(a) "Entity" means any government or governmental subdivision or agency, and any domestic or foreign corporation, limited liability company, general partnership, limited partnership, limited partnership association, limited liability partnership, limited liability limited partnership, joint venture, cooperative, association, or other legal entity, whether operated for profit or not for profit.

(b) "Financial institution" means any federal or state chartered commercial bank, savings and loan association, industrial bank, savings bank, or credit union.

**Source: L. 2007:** Entire section added, p. 359, § 1, effective April 2.

## PART 2

### ELECTRONIC FUNDS TRANSFERS

#### 11-105-201. Short title. (Repealed)

**Source: L. 2003:** Entire article added with relocations, p. 1117, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 29, § 1, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-101 as it existed prior to 2003.

#### 11-105-202. Legislative declaration. (Repealed)

**Source: L. 2003:** Entire article added with relocations, p. 1117, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 29, § 2, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-102 as it existed prior to 2003.

#### 11-105-203. Conditions of authority. (Repealed)

**Source: L. 2003:** Entire article added with relocations, p. 1117, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 29, § 3, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-104 as it existed prior to 2003.

**11-105-204. Conditions for retailers. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1118, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 30, § 4, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-105 as it existed prior to 2003.

**11-105-205. Powers of the banking board. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1119, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 31, § 5, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-106 as it existed prior to 2003.

**11-105-206. Jurisdiction of the district court. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1119, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 31, § 6, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-107 as it existed prior to 2003.

**11-105-207. Fees. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1119, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 32, § 7, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-108 as it existed prior to 2003.

**11-105-208. Consumer protection.** (1) Every Colorado bank using a communications facility shall provide its account holders, at the time the facility is used, with a receipt or record of each banking transaction initiated at a facility. Such receipt or record shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the banking transaction evidenced by such receipt or record. When a Colorado bank furnishes a statement of a demand, savings, or loan account to an account holder, such statement shall reflect each banking transaction affecting such account made by the account holder at a communications facility during the period covered by the statement.

(2) With respect to any card or other device issued to an account holder for use at a communications facility, any account holder whose card or device is lost or stolen and subsequently used by an unauthorized person shall only be liable for the lesser of fifty dollars or the amount of money, goods, or services obtained by the unauthorized use prior to notice to the Colorado bank that issued the card or device of the theft or loss. If the unauthorized use occurs through no fault of the account holder, no liability shall be imposed on the account holder.

(3) No account holder shall be held liable for any loss occurring as the result of any tampering or manipulation of a communications facility unless such account holder performs or authorizes such acts.

(4) Commercial banks shall continue to offer customers the right to use checking accounts. No bank shall make the use of such accounts burdensome with intent to discourage such use. The banking board shall issue rules designed to prevent violation of this provision.

(5) (a) No agreement to operate or share a communications facility may prohibit, limit, or restrict the right of the operator or owner of the communications facility to charge a



customer conducting a transaction using an account from a foreign bank a usual and customary access fee or surcharge unless prohibited under state or federal law.

(b) Notwithstanding paragraph (a) of this subsection (5), nothing in this section may be construed to prohibit, limit, or otherwise restrict the right of the operator or owner of a communications facility from voluntarily entering into an agreement to participate in a surcharge-free network.

**Source: L. 2003:** Entire article added with relocations, p. 1119, § 3, effective July 1.  
**L. 2007:** (5) added, p. 605, § 1, effective August 3.

**Editor's note:** This section is similar to former § 11-6.5-109 as it existed prior to 2003.

#### **11-105-209. Permissive sharing among dissimilar institutions. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1120, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 32, § 8, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-110 as it existed prior to 2003.

#### **11-105-210. No operation by bank employees. (Repealed)**

**Source: L. 2003:** Entire article added with relocations, p. 1120, § 3, effective July 1.  
**L. 2006:** Entire section repealed, p. 32, § 9, effective August 7.

**Editor's note:** Prior to its repeal, this section was similar to former § 11-6.5-111 as it existed prior to 2003.

### **PART 3**

#### **RESERVES, LOANS, AND INVESTMENTS**

**11-105-301. Reserves against deposits.** State banks that are subject to reserve provisions of the "Federal Reserve Act" shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", but, in addition thereto, the banking board may by rule impose reserve requirements that it deems prudent and sound on said banks or on state banks not subject to reserve provisions of the "Federal Reserve Act".

**Source: L. 2003:** Entire article added with relocations, p. 1120, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-7-101 as it existed prior to 2003.

**Cross references:** For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

**11-105-302. Loans, acceptances, investments, and letters of credit.** A state bank may make such loans, secured or unsecured, accept such drafts, make such investments, and issue such letters of credit as shall be permissible pursuant to rules promulgated by the banking board or otherwise permitted by this code. In promulgating such rules the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102.

**Source: L. 2003:** Entire article added with relocations, p. 1121, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-7-102 as it existed prior to 2003.

## ANNOTATION

**Law reviews.** For article, "Loan Documentation Clauses to Avoid Lender Liability", see 19 Colo. Law. 2225 (1990).

**Annotator's note.** Since § 11-105-302 is similar to § 11-7-102 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, and to repealed laws antecedent to CSA, C. 18, § 33, relevant cases construing those provisions have been included in the annotations to this section.

**Reduction of capital stock and distribution of assets thus received is sale of own stock to bank.** Where a bank reduced its capital stock by one-half and distributed assets of the bank amongst the stockholders equal to one-half the par value of the original stock, such a transaction was in effect a sale of one-half of the capital stock of the bank to itself, which is prohibited by law except in specified instances, and its agreement to pay for such stock is therefore in violation of its charter powers and cannot be enforced to the detriment of the rights of general creditors. *Kassler v. Kyle*, 28 Colo. 374, 65 P. 34 (1901).

**A cashier selling stock in a bank to such bank is liable for misappropriation of funds.** Where the cashier of a bank handed in his

resignation before the sale of stock in the bank to the bank, this was a mere subterfuge resorted to for the purpose of apparently changing his relations with the bank and he is therefore liable for the misappropriation of the assets of the bank to which he was a party in his official capacity independent of the ownership of the stock transferred. *United Sec. Co. v. Ostenberg*, 60 Colo. 249, 152 P. 1163 (1915).

**Where a bank put it in the power of the cashier to carry out a deal prohibited by this section, it should bear the loss,** if he committed a wrong and damaged the defendant by improper methods, purporting to act in his official capacity. The bank should bear the loss rather than an innocent outsider, who undoubtedly had faith in the cashier because of his relations to the bank. *Commercial Bank & Trust Co. v. Beach*, 66 Colo. 226, 180 P. 982 (1919).

**Stockholders conveying bank's own stock to such bank hold assets received subject to rights of creditors.** A stockholder who conveys his stock in a bank to such bank, or for a transfer of his stock knowingly receives therefor the funds and assets of the bank, holds the same subject to the prior rights of the creditors of the institution. *United Sec. Co. v. Ostenberg*, 60 Colo. 249, 152 P. 1163 (1915).

**11-105-303. Corporate powers - interest and charges.** In addition to the general corporate powers granted by this code, a state bank has the power, subject to the limitations and restrictions imposed by this code and the rules of the banking board, to lend money either upon the security of real property or personal property, or otherwise; to charge, or to receive in advance, interest therefor; and to contract for a charge for a secured or unsecured installment loan.

**Source:** L. 2003: Entire article added with relocations, p. 1121, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-7-103 as it existed prior to 2003.

**11-105-304. Bank investments - customers' orders.** (1) In addition to other investments, expressly authorized by this code or the rules promulgated by the banking board, a state bank may purchase:

(a) Obligations that satisfy the requirements of this code or the rules promulgated by the banking board for loans;

(b) Obligations of, or fully guaranteed by, the United States, a state of the United States, or the Dominion of Canada;

(c) Obligations of the international bank for reconstruction and redevelopment;

(d) Farm loan bonds issued by any federal land bank organized pursuant to an act of congress approved July 17, 1916, entitled: "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes." and known as the "Federal Farm Loan Act", and acts amendatory thereto. Such farm loan bonds shall be accepted as security for all public deposits and in all cases where bonds are required by law to be deposited with any department or public official of this state, but this section shall not be so construed as to prohibit such moneys or deposits from being invested in such other securities provided for by law.



(e) General obligations of a territory of the United States, a province of the Dominion of Canada, a political subdivision or instrumentality of a state or territory of the United States;

(f) Obligations of a corporation chartered by the United States or a state thereof doing business in the United States; an authority organized under state law, an interstate compact, or by substantially identical legislation adopted by two or more states if any of the foregoing under this paragraph (f) are approved by the banking board for investment;

(g) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment, located in any state in the United States or territories thereof;

(h) Such other obligations as the general assembly has designated or may from time to time designate as legal investments for public funds.

(2) A state bank may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of a corporation exclusively engaged in trust business and incorporated as a trust company under article 109 of this title, but every such investment shall be subject to prior approval of the banking board.

(3) A state bank's investment in the stock of a safe deposit company is governed by section 11-105-501.

(4) A state bank may purchase or sell without recourse any security, including corporate stock, upon the order of a customer and for such customer's account.

(5) A state bank may, to the extent that banks subject to the laws of the federal government are permitted so to do and to the extent permitted by the rules of the banking board, purchase shares of stock in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the "Small Business Investment Act of 1958", and as amended, but in no event shall any state bank hold shares in small business investment companies in an amount aggregating more than three percent of the bank's capital and surplus.

(6) No limitation or prohibition otherwise imposed by any provision of state law relating to banks shall prevent a state bank from investing not more than ten percent of the bank's capital as defined in the rules promulgated by the banking board in a bank service corporation as defined in 12 U.S.C. 1861 to 1865, inclusive, and as amended, subject to the rights, powers, and limitations contained therein, and such investment by state banks is expressly authorized to the extent permitted by the rules of the banking board.

(7) Notwithstanding any restrictions upon investments in obligations, powers, or activities contained in this code, a state bank may invest in any obligation, exercise such powers, and engage in such activities that such bank could legally acquire, exercise, and engage in were it operating as a national bank at the time such investment was made, such powers were exercised, or such activities were engaged in, to the extent permitted by the rules promulgated by the banking board.

(8) A state bank may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of any bank or bank holding company that provides services solely to depository institutions and their shareholders, directors, officers, and employees, wherein the ownership of stock of the bank or bank holding company, except for any stock required by law to be owned by directors of the bank or bank holding company, is restricted to banks or bank holding companies. The amount of stock owned by a state bank in any such bank or bank holding company shall not be in excess of five percent of the voting shares of such bank or bank holding company.

(9) (a) Notwithstanding the provisions of section 11-105-102 (2), a state bank may directly engage in activities that are primarily investments in real estate or may acquire and hold the voting stock of one or more corporations the activities of which are primarily investments in real estate. Such activities may include subdividing and developing real property and building residential housing or commercial improvements on such property and may also include owning, renting, leasing, managing, operating for income, or selling such property. Investments in real estate subject to section 11-105-401 may, at the bank's option, be included in investments authorized in this subsection (9) and thereby be removed

from the restrictions of section 11-105-401. Such property shall be entered on the books at not more than cost or fair market value, whichever is less, but without any charge off as required under section 11-105-401 (1) (d). The total of all investments made by a state bank pursuant to the authority of this subsection (9), including any loans and guarantees made by the bank on such property or made to or for the benefit of corporations the stock of which it holds pursuant to the authority of this subsection (9), shall not exceed ten percent of its total assets. The authority provided in this subsection (9) is in addition to investment in fixed assets of the bank pursuant to section 11-105-402.

(b) Upon finding that such restrictions are necessary according to the criteria set forth in section 11-102-105 and the policies set forth in section 11-101-102, the banking board may adopt rules that restrict the total investments of a state bank under this subsection (9) to a percentage less than ten percent of the bank's total assets. Nothing in this subsection (9) shall authorize a state bank to contravene a lawful order of the banking board or commissioner with respect to investments by the state bank in real estate or corporations engaging in real estate activities. A state bank that intends to initiate a program of investments under the authority of this subsection (9) shall give sixty days' advance notice to the division of such intent; except that such notice may be waived in the banking board's discretion where such notice is impracticable or unnecessary. The state bank shall also notify the division within ten days after the commencement of the investment program. If similar notices are required by the bank's federal supervisory agency, the same form of notice may be used for purposes of notice under this subsection (9).

(10) A state bank may invest in the securities of, or other interests in, any open-end and closed-end management type investment company or investment trust registered under the federal "Investment Company Act of 1940", 15 U.S.C. section 80(a)-1 et seq., if the portfolio of such investment company or investment trust is limited to United States government obligations that are backed by the full faith and credit of the United States government and to repurchase agreements fully collateralized by such obligations and if any such investment company or investment trust actually takes delivery of such collateral, either directly or through an authorized custodian.

**Source:** L. 2003: Entire article added with relocations, p. 1121, § 3, effective July 1. L. 2010: (2) amended, (HB 10-1422), ch. 419, p. 2067, § 16, effective August 11.

**Editor's note:** This section is similar to former § 11-7-106 as it existed prior to 2003.

#### ANNOTATION

**Law reviews.** For article, "Banks and the Securities Business: Limitations and Opportunities", see 18 Colo. Law. 2313 (1989). For article, "Recent Developments Permitting Banks to Engage in the Insurance Business," see 20 Colo. Law. 35 (1991).

#### **11-105-305. Acceptances - letters of credit.** (1) A state bank may accept:

(a) A draft that has not more than six months' sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods, or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable staples;

(b) A draft that has no more than three months' sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

(2) A state bank may issue letters of credit, but, unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.

**Source:** L. 2003: Entire article added with relocations, p. 1124, § 3, effective July 1.



**Editor's note:** This section is similar to former § 11-7-107 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-105-305 is similar to § 11-7-107 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**Letter of credit by state bank not ultra vires.** Letters of credit issued by a state bank,

being authorized by subsection (2) and falling within the provisions of § 4-5-102(1), are binding, primary obligations, dependent solely on presentation of conforming documents, and are, therefore, not ultra vires. *United Bank v. Quadrange, Ltd.*, 42 Colo. App. 486, 596 P.2d 408 (1979).

#### PART 4

#### PROPERTY, SALES, BORROWING, AND SIGNATURE GUARANTY

**11-105-401. Acquisition of property to satisfy indebtedness.** (1) A state bank may take property of any kind to satisfy, in whole or in part, or to protect indebtedness previously created in good faith by it. Property acquired by a state bank to apply on an indebtedness to a state bank shall be held subject to the following limitations:

(a) Stock shall be sold within six months or such additional period not exceeding eighteen months as the banking board may allow.

(b) Real estate may be used in the banking business, subject to the conditions prescribed by this code for property purchased for such use, or may be rented. Real estate may be put in such condition as will reasonably facilitate its sale. Unless used in the banking business, it shall be sold within fifteen years or such longer period as the banking board may allow.

(c) Other property, the acquisition of which is not otherwise authorized by this code, shall be sold within two years or such longer period as the banking board may allow.

(d) The property shall be entered on the books at not more than cost or fair market value, whichever is less, except as otherwise provided by the banking board. Each bank maintaining property acquired to satisfy indebtedness will obtain an initial written appraisal and subsequent appraisals as to fair market value by a qualified independent appraiser or such other person as the banking board may approve. Such subsequent appraisals shall be obtained pursuant to rules of the state banking board; except that, for purposes of this paragraph (d), an appraisal, as defined in section 12-61-702 (1), C.R.S., by an appraiser certified, licensed, or registered pursuant to section 12-61-708, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (d) at two hundred fifty thousand dollars or less. If such appraiser or other person approved by the banking board certifies in writing such appraiser's or other person's opinion that the fair market value has not declined, this opinion may be substituted for a subsequent appraisal.

**Source: L. 2003:** Entire article added with relocations, p. 1124, § 3, effective July 1.  
**L. 2004:** (1)(d) amended, p. 323, § 6, effective April 7.

**Editor's note:** This section is similar to former § 11-8-101 as it existed prior to 2003.

#### ANNOTATION

**Law reviews.** For article, "The Convertible, Participating Mortgage: Planning Opportunities and Legal Pitfalls in Structuring the Transaction", see 54 U. Colo. L. Rev. 295 (1983). For

article, "A Review of Agricultural Law: Hard Times and Hard Choices", see 15 Colo. Law. 629 (1986).

**11-105-402. Banking property - acquisition.** (1) A state bank may invest in fixed assets of the bank or the stock or obligations of any corporation holding such fixed assets or may make loans to or upon the security of the stock of any such corporation, but the aggregate of all such investments and loans shall not exceed one hundred percent of the bank's capital, as provided in the rules promulgated by the banking board; except that the banking board may approve a larger investment upon application of the bank if the banking board deems the same prudent. As used in this subsection (1), "fixed assets" means real estate, leasehold improvements, fixtures, furniture, and equipment; "real estate" and "leasehold improvements" include land and buildings to be used in the transaction of the bank's business and any excess space that may be rented to others.

(2) The rate of depreciation of property so acquired may be prescribed by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1125, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-8-102 as it existed prior to 2003.

**11-105-403. Sale of assets.** A state bank may sell any asset in the ordinary course of business or, with the approval of the banking board, in any other circumstance. The sale of all, or substantially all, of the assets of a bank or of a department thereof shall be governed by section 11-103-709.

**Source: L. 2003:** Entire article added with relocations, p. 1125, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-8-103 as it existed prior to 2003.

**11-105-404. Pledge of assets.** (1) A state bank may pledge its assets to:

- (a) Enable it to act as agent for the sale of obligations of the United States;
- (b) Secure borrowed funds;
- (c) Secure deposits if:

(I) The depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction; or

(II) The state bank secures the deposit with a letter of credit issued or confirmed by a federal home loan bank; or

- (d) Otherwise comply with the provisions of this code.

**Source: L. 2003:** Entire article added with relocations, p. 1125, § 3, effective July 1.  
**L. 2009:** (1)(c) amended, (HB 09-1053), ch. 159, p. 689, § 7, effective August 5.

**Editor's note:** This section is similar to former § 11-8-105 as it existed prior to 2003.

**11-105-405. Signature guaranty.** (1) A bank may become guarantor of the genuineness of a signature.

(2) A bank guaranteeing the signature of a person on any document warrants to any person relying on such guaranty only that:

- (a) The signature is that of a person signing;

(b) The signer is the holder, or the signer has purported authority to sign in the name of the holder; except that, if the holder purports to act as a fiduciary, as "fiduciary" is defined either in this code or in article 1 of title 15, C.R.S., or if the holder's name is signed by a person purporting to act on the holder's behalf as such a fiduciary, the bank warrants that such holder or such person so signing as such fiduciary is in fact the fiduciary he or she purports to be and warrants that the bank has no actual knowledge that such fiduciary is committing a breach of such fiduciary's obligation as such fiduciary in signing such document and that it has no knowledge of such facts that its action in guaranteeing the signature amounts to bad faith; and



(c) The signer has legal capacity to sign.

(3) A bank may disclaim in its guaranty all or any part of the obligations set forth in paragraph (b) of subsection (2) of this section.

**Source: L. 2003:** Entire article added with relocations, p. 1125, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-8-106 as it existed prior to 2003.

## PART 5

### SAFE DEPOSIT AND SAFEKEEPING FACILITIES

**11-105-501. Safe deposit boxes - leasing and subsidiary company.** (1) Subject to such rules as the banking board may prescribe, a bank may maintain and lease safe deposit boxes and may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

(2) A bank may own stock in a safe deposit company located in the same community in which the bank is doing business, not exceeding in aggregate cost fifteen percent of its capital and surplus, but at least ninety percent of the stock in such safe deposit company in which such stock is so owned must be owned by banks or trust companies.

**Source: L. 2003:** Entire article added with relocations, p. 1126, § 3, effective July 1.  
**L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 689, § 8, effective August 5.

**Editor's note:** This section is similar to former § 11-9-102 as it existed prior to 2003.

**11-105-502. Access by fiduciaries.** (1) Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

- (a) By any one or more of the persons acting as executors or administrators;
- (b) By any one or more of the persons otherwise acting as fiduciaries, when authorized in writing, signed by all other persons so acting;
- (c) By any agent authorized in writing, signed by all of the persons acting as fiduciaries.

**Source: L. 2003:** Entire article added with relocations, p. 1126, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-9-103 as it existed prior to 2003.

**11-105-503. Lease to minor.** A lessor may lease a safe deposit box to, or accept property for safekeeping from, a minor and, in connection therewith, deal with such minor to the same effect as if dealing with a person of full legal capacity, unless and until the minor's guardian or conservator files with the lessor a certified copy of the order of a Colorado court having jurisdiction appointing such guardian or conservator and directs otherwise.

**Source: L. 2003:** Entire article added with relocations, p. 1126, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-9-104 as it existed prior to 2003.

**11-105-504. Death of lessee - procedure.** The provisions of section 15-10-111, C.R.S., shall apply on the death of a lessee of a safe deposit box as defined in section 11-101-401.

**Source: L. 2003:** Entire article added with relocations, p. 1127, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-9-105 as it existed prior to 2003.

**11-105-505. Adverse claims to safe deposit box.** (1) An adverse claim to the contents of a safe deposit box is not sufficient reason to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name that identifies the lessee with the name in which the safe deposit box is leased; or

(b) The safe deposit box is leased, or the property is held, in the name of a lessee with the addition of words indicating that the contents, or property, are held in a fiduciary capacity for a named beneficiary or beneficiaries, and the adverse claim is supported by a sworn written statement of facts disclosing that it is made by, or on behalf of, such a beneficiary and that there is reason to know that the fiduciary may misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

(3) The lessor of a safe deposit box shall not be deemed to be in possession or control of the contents thereof for the purposes of section 13-54.5-103, C.R.S., or any other statute or rule pertaining to writs of garnishment.

**Source:** L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1.  
L. 2009: (3) added, (HB 09-1053), ch. 159, p. 689, § 9, effective August 5.

**Editor's note:** This section is similar to former § 11-9-106 as it existed prior to 2003.

**11-105-506. Annual fees.** Every lessor, except a bank as defined in section 11-101-401 (5) or subsidiary thereof, shall pay annually to the division of banking such fees as are determined by the banking board to be sufficient to defray the cost to the state of regulating such lessor.

**Source:** L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-9-107 as it existed prior to 2003.

## PART 6

### FINANCIAL INSTITUTIONS, OPERATION OF BRANCHES, ORGANIZATIONAL AND OPERATIONAL EQUALITY

**11-105-601. Legislative declaration.** (1) The general assembly finds, determines, and declares that distinctions in function and services of various types of financial institutions have become so narrow that organizational and operational equality should be encouraged and facilitated in this state. It is the intent of the general assembly to enact legislation that will promote the safety and soundness of financial institutions for the benefit of the public, improve efficiency for the economic operation of those financial institutions, and ensure that the state of Colorado, by its appropriate action, will continue its control of those financial institutions within its jurisdiction.

(2) Repealed.

**Source:** L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1.  
L. 2004: (2) repealed, p. 147, § 44, effective July 1.

**Editor's note:** This section is similar to former § 11-25-101 as it existed prior to 2003.

**11-105-602. Financial branches allowed - conversion of financial institutions to branches - acquisitions.** (1) Any financial institution may convert any affiliate financial institution to a branch.



(2) Any financial institution that has its principal place of business in Colorado may acquire any other financial institution for conversion to a branch or branches.

(3) (a) Any bank that has its principal place of business in this state or any industrial bank that has its principal place of business in this state, upon thirty days' prior written notice to the banking board, or any savings and loan association that has its principal place of business in this state, upon thirty days' prior written notice to the state commissioner of financial services, may establish one or more de novo branches anywhere in this state.

(b) Any bank, industrial bank, or savings and loan association may, upon thirty days' written notice to the banking board or commissioner, be converted to a branch of any bank, industrial bank, or savings and loan association.

(b.5) (I) No financial institution may directly or indirectly establish or maintain or cause to be established or maintained its principal office, a loan production office, a deposit production office, an electronic communications device, or a branch in this state on or within one and one-half miles from premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate that engages in commercial activities.

(II) This paragraph (b.5) shall not apply with respect to any industrial bank that:

(A) Became an insured depository institution before October 1, 2003, or pursuant to an application for deposit insurance that was approved by the federal deposit insurance corporation before such date; and

(B) Is a subsidiary of a parent entity, at least eighty-five percent of whose gross revenues on a consolidated basis, including affiliates, were derived from engaging in, on an ongoing basis, activities that are financial in nature or incidental to a financial activity, as defined by the federal "Gramm-Leach-Bliley Act", as amended, Pub.L. 106-102, 113 Stat. 1388, during at least three of the prior four calendar quarters.

(c) The banking board and the financial services board shall adopt policies and procedures by rule no more restrictive than federal regulatory policies and procedures relative to notice of branches to be established under this subsection (3).

**Source:** L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1. L. 2004: (3)(c) amended, p. 147, § 45, effective July 1. L. 2007: (3)(b.5) added, p. 117, § 2, effective March 16; (3)(b.5)(II)(B) amended, p. 2021, § 15, effective June 1.

**Editor's note:** This section is similar to former § 11-25-103 as it existed prior to 2003.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Version of Branch Banking", see 20 Colo. Law. 1611 (1991).

**11-105-603. Financial institutions - common powers and limitations.** (1) Any acquisition of a branch from another financial institution shall be subject to the percentage limitation set forth in subsection (5) of this section. Such an acquisition by a financial institution that has its principal place of business in Colorado is expressly authorized, and the location of such branch may be changed pursuant to law.

(2) Nothing in this part 6 shall be construed to apply to a branch facility operating under an emergency grant pursuant to section 11-103-809 or 11-108-611; however, such a branch facility may continue to operate in perpetuity as a branch without being subject to any percentage limitation on branches set forth in this part 6.

(3) Nothing in this part 6 or part 2 of article 104 of this title shall be construed to prevent the acquisition of any financial institution in this state by any other financial institution the principal operations of which are located in this state; however, any conversion of all or any part thereof to a branch shall be in accordance with the provisions of this part 6.

(4) If any financial institution converts any affiliate financial institution to a branch pursuant to the provisions of this part 6, such financial institution at the time of such conversion or immediately thereafter shall meet the capital standards for banks in Colorado

as required by the “Colorado Banking Code”, by any rules of the banking board, or by the commissioner.

(5) Notwithstanding any other provision of this part 6, no financial institution that acquires any other financial institution on or after August 1, 1991, may convert the acquired financial institution to a branch or branches if such conversion or conversions will result in the acquiring financial institution controlling more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado that are federally insured. For the purpose of this subsection (5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency.

**Source:** L. 2003: Entire article added with relocations, p. 1132, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-25-104 as it existed prior to 2003.

**11-105-604. Subsidiary depository institutions as agent.** (1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for an affiliate financial institution, as such authority is set forth in section 101(d) of the federal “Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994”. Notwithstanding any other provision of law, a bank acting as an agent in accordance with this subsection (1) for an affiliate financial institution shall not be considered to be a branch of the affiliate.

(2) Any contract entered into pursuant to section 11-25-105 as it existed prior to July 1, 1995, shall remain valid and in effect according to the terms of the contract and any subsequent agreement of the contracting financial institutions.

**Source:** L. 2003: Entire article added with relocations, p. 1132, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-25-105 as it existed prior to 2003.

**Cross references:** For the federal “Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994”, see Pub.L. 103-328, codified at 12 U.S.C. § 1811 et seq.; for section 101(d) of the act, see 12 U.S.C. § 1828.

**11-105-605. Rule-making by banking board and financial services board.** (1) The banking board shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.

(2) The financial services board shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.

(3) The banking board and the financial services board shall coordinate their rule-making that implements the provisions of this part 6 so that the procedures and time periods are the same for each type of financial institution to give notice of a branch thereunder.

**Source:** L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.  
L. 2004: (2) and (3) amended, p. 147, § 46, effective July 1.

**Editor’s note:** This section is similar to former § 11-25-106 as it existed prior to 2003.

**11-105-606. Notice of branch closing.** No later than ninety days prior to the proposed date of any branch closing, the “notice of branch closing” required to be filed with the appropriate federal regulatory agency shall be filed with the banking board or the financial services board. The notice of branch closing shall include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

**Source:** L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-25-107 as it existed prior to 2003.



**ARTICLE 106****Fiduciary Business**

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

11-106-101.	Bank as fiduciary.	11-106-105.	Substitution of Colorado bank
11-106-102.	Investment power.		or Colorado trust company.
11-106-103.	General fiduciary powers.	11-106-106.	Investment in securities.
11-106-104.	Agency powers.		

**11-106-101. Bank as fiduciary.** It shall be unlawful for a state bank to act as fiduciary, other than as escrow agent, unless it is authorized by its charter or amendments thereto to exercise trust powers.

**Source: L. 2003:** Entire article added with relocations, p. 1133, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-101 as it existed prior to 2003.

**11-106-102. Investment power.** A bank acting as fiduciary shall have the same investment powers as an individual fiduciary under like circumstances.

**Source: L. 2003:** Entire article added with relocations, p. 1133, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-102 as it existed prior to 2003.

**11-106-103. General fiduciary powers.** Unless otherwise expressly provided by statute, a bank acting as a fiduciary shall have all of the rights, powers, privileges, and immunities and be subject to the same obligations and duties as an individual fiduciary under like circumstances.

**Source: L. 2003:** Entire article added with relocations, p. 1133, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-103 as it existed prior to 2003.

**11-106-104. Agency powers.** In addition to its other powers, any bank that is authorized to exercise fiduciary powers shall, upon proper qualification under this code, have the power to act as a fiduciary in any capacity. It may also act as registrar, transfer agent, or attorney-in-fact and have the power to receive, manage, and apply sinking funds.

**Source: L. 2003:** Entire article added with relocations, p. 1133, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-104 as it existed prior to 2003.

**11-106-105. Substitution of Colorado bank or Colorado trust company.** (1) In addition to the procedures initiated by an interested party concerning internal affairs of their trust under section 15-16-201, C.R.S., or procedures otherwise permitted by Colorado law, and unless a will, agreement, or trust instrument otherwise provides, a company may be substituted as fiduciary for all or a part of the fiduciary business of another company without court approval if:

(a) The successor is a Colorado affiliate of the transferor and the boards of directors of the transferor and successor both adopt resolutions to cause the successor to be substituted as fiduciary for all or part of the fiduciary business of the transferor;

(b) The transferor is discontinuing all or part of its fiduciary business and the boards of directors of the transferor and successor both adopt resolutions to cause the successor to be

substituted as fiduciary for the fiduciary business of the transferor that is being discontinued; or

(c) There is a merger or consolidation of the transferor and the successor, with the successor being the surviving entity, and the boards of directors of the transferor and successor both adopt resolutions to cause the successor to be substituted as fiduciary for all of the fiduciary business of the transferor.

(2) If the boards of directors adopt such resolutions as provided in subsection (1) of this section and comply with the notice and delivery provisions pursuant to subsection (3) of this section, the successor shall replace the transferor as fiduciary and shall be the successor fiduciary possessing all the rights, powers, and duties that were granted to or imposed on the transferor. Such rights, powers, and duties shall vest in the successor upon effectuation of the substitution, irrespective of the date on which the fiduciary relationship is established or of the date of any related written agreement establishing the fiduciary relationship or of the date of the death of any decedent whose estate is being so administered. Nothing in connection with a substitution affects a renunciation or revocation of any letters of administration or letters testamentary pertaining to a fiduciary relationship or a removal or resignation of the transferor as personal representative, trustee, custodian, or other fiduciary.

(3) At least thirty days prior to the effective date of the substitution, a certified copy of the resolutions of the boards of directors of the transferor and successor shall be delivered to the division of banking, and a written notice of such substitution shall be delivered to each interested party. Delivery will be deemed to have occurred upon the earlier of actual delivery or three days after depositing such resolutions or notification in the United States mails, certified mail with return receipt prepaid. The effective date of the substitution as fiduciary for all or part of the fiduciary business, as set forth in the resolutions, shall be the date provided in the resolutions, which shall not be earlier than thirty days after the date of delivery in accordance with this subsection (3). If the resolutions provide no effective date, the effective date shall be thirty days after the date of delivery in accordance with this subsection (3).

**Source: L. 2003:** Entire article added with relocations, p. 1134, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-106 as it existed prior to 2003.

**11-106-106. Investment in securities.** Notwithstanding any other law to the contrary and subject to the standard contained in sections 11-50-113 (2) and 15-1-304, C.R.S., a Colorado bank or trust company may invest and reinvest the assets that it maintains in its trust in the securities of any open-end or closed-end management investment company or investment trust registered under the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a1-64, as amended. A Colorado bank or trust company shall be allowed to make such investment even if it exercises investment discretion as a fiduciary, custodian, managing agent, or otherwise with respect to the investment and reinvestment of assets that it maintains in its trust department. The fact that a Colorado bank or trust company, or any affiliate thereof, is providing services to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and receiving reasonable remuneration for the services, does not preclude such bank or trust company from investing in the securities of such investment company or trust.

**Source: L. 2003:** Entire article added with relocations, p. 1135, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-10-107 as it existed prior to 2003.

## ARTICLE 107

### Criminal Offenses

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.



11-107-101.	Unauthorized conduct of banking business.		ties and judgment against others.
11-107-102.	Receipt of deposits while insolvent.	11-107-107.	Embezzlement or misapplication of funds.
11-107-103.	Unlawful service as officer or director.	11-107-108.	Unlawful acts or omissions - penalties.
11-107-104.	Unlawful gratuity, compensation, or transactions.	11-107-109.	Unlawful acts or failure to perform - penalty.
11-107-105.	Unlawful concealment of transactions.	11-107-110.	Injunction.
11-107-106.	Unlawful payment of penal-	11-107-111.	General corporation laws applicable.

**11-107-101. Unauthorized conduct of banking business.** It is a criminal offense for any person not authorized to carry on a banking business under this code, falsely and with intent to defraud, to act as a bank or to represent that he or she is or is acting for a bank or to use an artificial or corporate name that is the name of a bank.

**Source: L. 2003:** Entire article added with relocations, p. 1135, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-101 as it existed prior to 2003.

**11-107-102. Receipt of deposits while insolvent.** It is a criminal offense if a state bank receives any deposit while insolvent, or an officer, director, or employee knows or, in the proper performance of his or her duty should know, of such insolvency and receives or authorizes the receipt of such deposit, or if such state bank or person has knowingly concealed or misstated material facts regarding the insolvency of the state bank from or to the banking board, commissioner, or division of banking.

**Source: L. 2003:** Entire article added with relocations, p. 1135, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-102 as it existed prior to 2003.

## ANNOTATION

- I. General Consideration.
- II. Necessity for Intent or Knowledge.

### I. GENERAL CONSIDERATION.

**Annotator's note.** Since § 11-107-102 is similar to repealed laws antecedent to CSA, C. 18, § 26, relevant cases construing those provisions have been included in the annotations to this section.

**Section is valid under the federal constitution.** This section as originally found in L. 1885, p. 50, was held not within the class of legislation prohibited by the provisions of the federal constitution. When the law applies to all persons engaged in a certain occupation or business, and each one is without distinction amenable to its provisions solely because he pursues such occupation or business, it is then "binding upon all persons of the community under similar circumstances". *Robertson v. People*, 20 Colo. 279, 38 P. 326 (1894).

**It is not essential to a conviction that the president of a bank should assent to a particular deposit,** or that he should have acquiesced in its reception after he obtained actual knowl-

edge that it had been made. *McClure v. People*, 27 Colo. 358, 61 P. 612 (1900).

When an officer and director of a bank with authority to instruct the employees as to what they should and should not do remains silent, it is mere sophistry to say that he did not assent to the reception of deposits, even when made in his absence, when as a reasonable man he knew they would be received by the employees if presented. *Woolsey v. People*, 98 Colo. 62, 53 P.2d 596 (1935).

**Indictment sufficient to charge "larceny" for violation of this section.** *Cole v. Van Horn*, 67 F.2d 735 (10th Cir. 1933).

**Facts sufficient to show insolvency.** *Walther v. McFerson*, 92 Colo. 314, 20 P.2d 552 (1933).

### II. NECESSITY FOR INTENT OR KNOWLEDGE.

**An intent to violate the provisions of this section must be shown.** Under this section a director of a bank may not be held liable, either civilly or criminally, for a violation of the provisions of the statute unless the evidence shows that he intended to violate its provisions.

Goldsworthy v. Anderson, 92 Colo. 446, 21 P.2d 718 (1933).

**It is not necessary that a specific intent to defraud or harm** a depositor should be shown on the part of defendant, or that defendant had actual knowledge of the insolvency of the bank, if his ignorance of its insolvency was due to his own criminal negligence. McClure v. People, 27 Colo. 358, 61 P. 612 (1900).

**Intentional absence by officer will not exempt him from liability.** An officer of a bank

cannot exempt himself from criminal liability under this section by intentionally absenting himself from the bank and abstaining from participation in its management, and purposely neglecting to avail himself of means of information as to its financial condition, or by showing that if he had given attention to its business, on account of his ignorance of banking methods he would not have been able to ascertain its true condition. McClure v. People, 27 Colo. 358, 61 P. 612 (1900).

**11-107-103. Unlawful service as officer or director.** (1) It is a criminal offense for any person to serve as an officer or director of a state bank, or serve as commissioner, deputy commissioner, or employee of the division:

(a) Who has been convicted of an unpardoned offense constituting, in the jurisdiction in which the conviction was had, a violation of the banking laws, a felony involving moral turpitude, or a breach of trust;

(b) Who is indebted to the bank for more than thirty days upon a judgment that has become final.

**Source: L. 2003:** Entire article added with relocations, p. 1135, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-103 as it existed prior to 2003.

**11-107-104. Unlawful gratuity, compensation, or transactions.** (1) It is a criminal offense for an affiliate of a state bank or for an officer, director, or employee of a state bank or affiliate of a state bank:

(a) To solicit, accept, or agree to accept, directly or indirectly, from any person other than the institution, any gratuity, compensation, or other personal benefit for any action taken by the institution, or for endeavoring to procure any such action;

(b) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(2) In this section and section 11-105-101 (5), the term "affiliate" of a state bank shall include:

(a) Any person who holds a majority of the stock of the bank or has been determined by the banking board to hold a controlling interest therein, any other corporation in which such person owns a majority of the stock, and any partnership in which such person has an interest;

(b) Any corporation in which the state bank or an officer, director, or employee thereof holds a majority of the stock and any partnership in which such person has an interest;

(c) Any corporation of which a majority of the directors are officers, directors, or employees of the state bank or of which officers, directors, trustees, or employees constitute a majority of the directors of the state bank.

**Source: L. 2003:** Entire article added with relocations, p. 1135, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-104 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-107-104 is similar to § 11-11-104 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**This section and § 11-6-101 recognize the existence of "affiliate banking"** in Colorado and impose criminal sanctions for acts committed outside the scope of recognized banking practices. Peoples Bank v. Banking Bd., 164 Colo. 564, 436 P.2d 681 (1968).



**11-107-105. Unlawful concealment of transactions.** (1) It is a criminal offense for an officer, director, employee, attorney, or agent of a state bank:

(a) To conceal, or endeavor to conceal, any transaction of the bank from any officer, director, or employee of the bank or any official or employee of the division to whom it should properly be disclosed;

(b) With intent to deceive, to make any false or misleading statement or entry, or omit any statement or entry that should be made in any book, account, report, or statement of the institution.

(2) No bank shall sell, assign, or transfer any of its assets when insolvent, or in contemplation of insolvency with the intent of preferring any credit, or preventing the application of such assets to the subrogation of its debts; nor shall any officer, director, or employee of any bank personally authorize or permit the same to be done.

**Source: L. 2003:** Entire article added with relocations, p. 1136, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-105 as it existed prior to 2003.

**11-107-106. Unlawful payment of penalties and judgment against others.** It is a criminal offense for a state bank to pay a fine, or penalty imposed by law upon any other person, or any judgment against such person, or to reimburse directly or indirectly any person by whom such fine, penalty, or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien or as provided in section 11-103-602.

**Source: L. 2003:** Entire article added with relocations, p. 1136, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-106 as it existed prior to 2003.

**11-107-107. Embezzlement or misapplication of funds.** It is a criminal offense for any officer, director, shareholder, or employee of any bank to directly or indirectly embezzle, abstract, or misapply, or cause to be embezzled, abstracted, or misapplied, any of the funds or securities or other property of or under the control of the bank with intent to deceive, injure, cheat, wrong, or defraud any person.

**Source: L. 2003:** Entire article added with relocations, p. 1136, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-107 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-107-107 is similar to repealed laws antecedent to CSA, C. 18, § 25, relevant cases construing those provisions have been included in the annotations to this section.

**This section places embezzlement by bankers in a special class.** It was the clear intention of the general assembly to withdraw from the operation of the earlier and general act of 1907 the crime of embezzlement by bankers, and place it in a special class by itself. This being true, it follows that, so far as bankers are con-

cerned, this provision supersedes and impliedly repeals the act of 1907. *Cliff v. People*, 84 Colo. 254, 269 P. 907 (1928).

**It is only when specific intent exists** that an act comes within the provisions of this section; hence, where abstraction or misapplication is charged, it is necessary to allege such specific intent. *Cliff v. People*, 84 Colo. 254, 269 P. 907 (1928).

**Facts sufficient for conviction and penalty.** *Briggs v. People*, 76 Colo. 591, 233 P. 836 (1925).

**11-107-108. Unlawful acts or omissions - penalties.** (1) Any person responsible for an act or omission expressly declared to be a criminal offense by this code:

(a) Is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine

of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment;

(b) If the act or omission was intended to defraud, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) An officer, director, employee, agent, or attorney of a state bank shall be criminally responsible for an act or omission of the institution declared to be a criminal offense by this code if, knowing that such act or omission is a criminal offense, he or she participates in authorizing, executing, ratifying, or concealing such act or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

(3) Unless otherwise provided in this code, it is no defense to a criminal prosecution under this code that the defendant did not know the facts establishing the criminal character of the act or omission charged, if the defendant could and should have known such facts in the proper performance of his or her duty.

**Source: L. 2003:** Entire article added with relocations, p. 1137, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-108 as it existed prior to 2003.

**11-107-109. Unlawful acts or failure to perform - penalty.** Any person who willfully or knowingly fails to perform any act required, and as required by section 11-102-102 (10) or 11-102-501, or who commits any act in violation of said sections commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**Source: L. 2003:** Entire article added with relocations, p. 1137, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-20-117 as it existed prior to 2003.

#### ANNOTATION

**Law reviews.** For article, "Highlights of 1955 Colorado Legislative Session — Banks and Banking", see 28 Rocky Mt. L. Rev. 79 (1955).

**Annotator's note.** Since § 11-107-109 is similar to repealed laws antecedent to CSA, C. 18, § 105, a relevant case construing those provisions has been included in the annotations to this section.

**The penalty provided by this section is germane** to the general subject expressed in the

title, "An act relating to banks and bankers", is relevant and appropriate to such title, and therefore is covered by the title. *Cole v. People*, 92 Colo. 145, 18 P.2d 470 (1933).

**And is valid and enforceable.** The penal provision of this section is valid and enforceable, although it creates a crime otherwise than by amendment of the criminal code. *Cole v. People*, 92 Colo. 145, 18 P.2d 470 (1933).

**11-107-110. Injunction.** (1) If a violation of this code by a state bank or an officer, director, or employee thereof is threatened or impending and may cause substantial injury to the institution or to the depositors, creditors, or stockholders thereof, the district court in and for the county in which the bank is located may, upon the suit of the banking board, issue an injunction restraining such violation.

(2) If any person, not authorized to carry on a banking business under this code, falsely acts as a bank, or falsely represents that such person is acting for a bank, or uses an artificial or corporate name that is the name of a bank, the said district court may, upon the suit of the banking board, issue an injunction restraining such act.

**Source: L. 2003:** Entire article added with relocations, p. 1137, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-109 as it existed prior to 2003.

**11-107-111. General corporation laws applicable.** The provisions of articles 30 to 52, 101 to 117, and 121 to 137 of title 7, C.R.S., relating to corporations and nonprofit



corporations shall, insofar as the same are not inconsistent with this code, govern corporations and nonprofit corporations operating under the provisions of this code.

**Source:** L. 2003: Entire article added with relocations, p. 1137, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-11-110 as it existed prior to 2003.

ARTICLE 108

Industrial Banks

**Editor's note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**Cross references:** For exclusion of industrial banks from the provisions of the "Colorado Banking Code", see § 11-101-301; for the "Unclaimed Property Act", see article 13 of title 38.

**Law reviews:** For article, "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989).

PART 1

GENERAL PROVISIONS

- 11-108-101. Definitions.
- 11-108-102. Applicability of powers of banking board and bank commissioner to industrial banks.
- 11-108-103. No private right of action.

PART 2

POWERS

- 11-108-201. Powers - general corporate - loans and investments - rules of banking board.
- 11-108-202. Special powers.
- 11-108-203. Trust, fiduciary, and agency powers - when.
- 11-108-204. Forbidden powers.
- 11-108-205. Industrial bank organized as a limited liability company.

PART 3

CHARTERS

- 11-108-301. Incorporation.
- 11-108-302. Charter - application - fee - issuance procedure - change in location.
- 11-108-303. Amendment - where filed.
- 11-108-304. Certificate approving amendment.
- 11-108-305. Capital structure - inadequacy.
- 11-108-306. Assessments.

PART 4

RECORDS, REPORTING, AND INFORMATION

- 11-108-401. Subject to corporation laws -

powers of banking board - examinations by commissioner - reports by industrial banks.

- 11-108-402. Requirements for acquiring control of industrial banks - definitions.
- 11-108-403. Reports on condition and income to commissioner.
- 11-108-404. Industrial bank converted to state bank.

PART 5

DIRECTORS, PENALTIES, REMOVAL, SUSPENSION, AND ENFORCEMENT

- 11-108-501. Unsound business practices.
- 11-108-502. Assessment of civil money penalties by banking board.
- 11-108-503. No indemnification or insurance against civil money penalties.
- 11-108-504. Removal of director, officer, or other person.
- 11-108-505. Suspension of director, officer, or other person.
- 11-108-506. Informal enforcement authority.
- 11-108-507. Director and officer insurance and fidelity bonds - legislative declaration.

PART 6

LIQUIDATION AND DISSOLUTION

- 11-108-601. Voluntary liquidation and dissolution.
- 11-108-602. Involuntary liquidation by banking board - reorganization.
- 11-108-603. Injunctions - appeals.

11-108-604.	Liquidation by banking board - procedure.	11-108-702.	Limitations on secured borrowing.
11-108-605.	Sale of bank stock.	11-108-703.	Federal deposit insurance corporation membership required.
11-108-606.	Federal deposit insurance corporation as liquidator.	11-108-704.	Acquisition of property to satisfy indebtedness.
11-108-607.	Assets sold or pledged as security.		
11-108-608.	Enforcement of directors' liability.		
11-108-609.	Application of deposits.		
11-108-610.	Emergency grant of new charter.		
11-108-611.	Emergency grant of branch facility.		

## PART 7

## PART 8

## CRIMINAL OFFENSES AND VIOLATIONS

11-108-801.	Criminal offenses.
11-108-802.	Certain violations.
11-108-803.	Prosecutions.

## BANKING PRACTICES

11-108-701. Saturday closing - notice - ef-

## PART 1

## GENERAL PROVISIONS

**11-108-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Bank" or "industrial bank" means an industrial bank incorporated under the provisions of section 11-108-301 or under the provisions of section 11-108-205.

(2) "Banking board" shall have the same meaning as in section 11-101-401 (7).

(3) "Commissioner" means the state bank commissioner.

(4) "Member" means a bank required by this article to be a member of the federal deposit insurance corporation and shall include "new member" except where the term "new member" is used in the same section or subsection.

(5) "New member" means a member that had no outstanding savings obligations as of the last day of the calendar year preceding the year in which an assessment is made and that has not filed with the commissioner an undertaking not to issue savings obligations.

(6) "Primary service area" means the smallest geographical area from which it is anticipated that the proposed industrial bank will draw seventy-five percent of its individual, partnership, and corporate deposits.

(7) "Savings obligations" means savings deposits of any type including contracts, agreements, certificates of deposit, however evidenced, and savings accounts and unpaid interest accrued thereon.

**Source: L. 2003:** Entire article added with relocations, p. 1138, § 3, effective July 1; (1) amended, p. 1749, § 5, effective July 1.

**Editor's note:** (1) This section is similar to former § 11-22-101 as it existed prior to 2003.

(2) Section 11-22-101 (1) as amended by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated to this section as subsection (1).

**11-108-102. Applicability of powers of banking board and bank commissioner to industrial banks.** The powers, duties, and functions of the banking board and the commissioner contained in article 102 of this title and the declaration of policy contained in section 11-101-102 shall apply to the provisions of this article.

**Source: L. 2003:** Entire article added with relocations, p. 1138, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-101.1 as it existed prior to 2003.



**11-108-103. No private right of action.** Except as expressly provided in this article, no person, other than the banking board, shall have the right to bring or maintain any private action, at law or in equity, for a violation of or enforcement of this article.

**Source: L. 2003:** Entire article added with relocations, p. 1138, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.6 as it existed prior to 2003.

## PART 2

### POWERS

**11-108-201. Powers - general corporate - loans and investments - rules of banking board.** (1) Every industrial bank duly organized and chartered under the provisions of this article has the powers granted general business corporations by the laws of the state of Colorado to the extent the same are not inconsistent with or contrary to this article, including such special powers provided in this article, without the necessity of such powers or special powers being specifically recited or set out in the articles of incorporation of said industrial bank or any amendments thereto.

(2) No industrial bank shall be authorized to engage in any business or activity except as may be authorized by this article.

(3) No stock shall be issued for any consideration other than cash, except stock dividends.

(4) An industrial bank may make such loans, secured or unsecured, accept such drafts, make such investments, and issue such letters of credit as shall be permissible pursuant to rules promulgated by the banking board or otherwise permitted by this article. In promulgating such rules the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102.

(5) In addition to the general corporate powers granted by this code, an industrial bank has the power, subject to the limitations and restrictions imposed by this code and the rules of the banking board, to lend money either upon the security of real property or personal property, or otherwise; to charge, or to receive in advance, interest therefor; and to contract for a charge for a secured or unsecured installment loan.

(6) As authorized pursuant to section 10-2-601 (2), C.R.S., an industrial bank may, pursuant to federal law or under such rules as may be adopted by the banking board or the commissioner of insurance pursuant to section 10-2-601, C.R.S., act as the agent for any insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For such services, an industrial bank may receive such fees or commissions as may be agreed between the industrial bank and the insurance company.

(7) (a) It is unlawful for an industrial bank, or an officer, director, employee, or affiliate of an industrial bank, to:

(I) Engage in the business of issuing, floating, underwriting, distributing, or promoting the sale of stocks, bonds, or other securities; or

(II) Be an officer, trustee, director, employee, stockholder, or partner of any person engaged principally in a business described in subparagraph (I) of this paragraph (a).

(b) Nothing in paragraph (a) of this subsection (7) shall include securities issued or guaranteed as to principal and interest by:

(I) The United States or any agency of the United States;

(II) A state or territory of the United States; or

(III) A subdivision, instrumentality, or public authority organized under the laws of such state or territory pursuant to an interstate compact between two or more states.

**Source: L. 2003:** Entire article added with relocations, p. 1138, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-106 as it existed prior to 2003.

**11-108-202. Special powers.** (1) Every industrial bank, in addition to the powers granted by this article or the rules promulgated by the banking board, has all of the following powers:

(a) The right to purchase and carry obligations of, or fully guaranteed by, the United States or a state of the United States; obligations of a corporation chartered by the United States or a state of the United States doing business in the United States; obligations of an authority organized under state law, under an interstate compact, or by substantially identical legislation adopted by two or more states if any such authority is approved for investment by the rules of the banking board; revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of investment, located in any state of the United States; general obligations of a territory of the United States, or a political subdivision or instrumentality of a state or territory of the United States; obligations that the general assembly of Colorado designates from time to time as legal investments for public funds; notes, secured or unsecured; mortgages; contracts; acceptances; bills of exchange; or trust receipts. All assets and funds of an industrial bank shall at all times be maintained within the United States and in legal investments within the United States as recited in this paragraph (a); but, with the written consent of the banking board, industrial banks may purchase and carry other types of assets but shall only be permitted to make such investments as are permitted by law to fiduciaries.

(b) The right to lend money upon the security of the character and earning capacity of the borrower, comakers, personal chattels, real property, or any other property, or a combination of the foregoing;

(c) If a member in good standing of the federal deposit insurance corporation, the right to issue certificates of deposit, contracts, or agreements under any descriptive name and receive savings deposits that may bear such interest as their terms may provide. Industrial banks may pay interest on savings deposits, certificates of deposit, contracts, or agreements at a rate, without regard to compounding, not to exceed one-half percent per annum greater than the rates of interest that any national or state bank, savings and loan association, or building and loan association in the state is permitted by law to pay on the same type of savings deposit, certificate of deposit, contract, or agreement, whichever is greater. If any national or state bank, savings and loan association, or building and loan association is not limited by applicable law or rule with regard to the rate of interest on any type of savings deposit, certificate of deposit, contract, or agreement, banks shall also not be limited in the same manner. Such certificates of deposit, contracts, or agreements shall be issued with a maturity of not less than seven days and shall be sold at not less than par.

(d) The right to issue, with the prior approval of the banking board based upon the facts and circumstances of each case, capital notes, debentures, or evidences of indebtedness that will not be covered by a guaranty and may be included as a part of the capital and surplus and that:

(I) Have a maturity of not less than five years;

(II) Will be paid by the bank at or prior to maturity in part or in whole only upon written permission of the banking board and are at all times and in all respects wholly subject, subordinate, junior, and inferior to all senior debts of the bank with respect to right of payment;

(III) Provide that the holder of the note by its acceptance thereof must agree that the payment of the principal and interest of the note is expressly subordinated to the prior payment of the principal and interest on all existing and future obligations of the bank to its savings depositors and certificate holders; and

(IV) Contain a provision in the note that no amount shall be paid by the bank as principal or interest unless the capital of the bank, as defined in rules of the banking board, increases over its capital as of the date of the execution of the note by not less than the amount of such principal or interest payment;

(e) The right to invest not more than ten percent of its assets in personal property leases to the same extent and in the same manner as allowed national or other state banks; except that an industrial bank shall not invest in any lease in excess of fifteen percent of its capital, as defined in rules of the banking board, less any inadequacy of capital to any person,



association, partnership, or corporation and except that an industrial bank may exceed the limit established by this paragraph (e) subsequent to investing in the lease if such excess is necessary to protect the lease;

(f) The right to broker first mortgage loans.

**Source: L. 2003:** Entire article added with relocations, p. 1140, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-107 as it existed prior to 2003.

#### ANNOTATION

**Law reviews.** For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968).

**11-108-203. Trust, fiduciary, and agency powers - when.** In addition to its other powers, an industrial bank that is authorized by its charter to exercise trust powers, upon proper qualification under this article, has the power to act as a fiduciary in any capacity. It may also act as registrar, transfer agent, fiscal agent, or attorney-in-fact and have the power to receive, manage, and apply sinking funds. Every industrial bank that is authorized by its charter to exercise trust powers pursuant to this section shall make and file with the commissioner an annual report of trust assets and such other reports, as the banking board may require by rule, on such forms as may be prescribed by the banking board. No report filed pursuant to this section shall be required to be published.

**Source: L. 2003:** Entire article added with relocations, p. 1141, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-107.5 as it existed prior to 2003.

**11-108-204. Forbidden powers.** (1) No industrial bank has power to do any of the following:

(a) To accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

(b) To engage in, or acquire any interest in, any business except as permitted by this article.

(2) In calculating the obligations of a single obligor there shall be included:

(a) In the case of obligations of a partnership or association, the obligations of each general partner or each member of the association;

(b) In the case of obligations of a general partner or a member of an association, the obligations of the partnership or association;

(c) In the case of obligations of a corporation, the obligations of any subsidiaries in which it owns, directly or indirectly, a majority of the outstanding voting stock;

(d) In the case of obligations of a corporation, the amount of a loan made to any other person to the extent that the proceeds of such loan, directly or indirectly, are to be loaned to the corporation; or used for the acquisition from the corporation of any securities issued by the corporation, other than securities acquired by an underwriter for public offering; or transferred to the corporation without fair and adequate consideration. The discharge of an equivalent amount of debt previously incurred in good faith for value shall be deemed fair and adequate consideration.

**Source: L. 2003:** Entire article added with relocations, p. 1141, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-108 as it existed prior to 2003.

**11-108-205. Industrial bank organized as a limited liability company.** (1) Pursuant to section 11-102-104 (5.5) (b), an industrial bank charter may be issued to a limited liability company that otherwise meets the requirements of this article.

(2) An industrial bank organized as a limited liability company shall not be required to exist in perpetuity; except that the articles of organization of such an industrial bank shall provide for a method to extend the existence of the industrial bank in the event that termination occurs. In addition, the articles of organization of such an industrial bank shall require that liquidation of the limited liability company conform with the requirements of this code.

(3) Upon approval of the banking board, an industrial bank organized as a limited liability company may be merged with or converted into another entity regardless of the form of the surviving entity, so long as the surviving entity satisfies the requirements of this code.

(4) Upon approval of the banking board, an industrial bank organized as a corporation may be merged with or converted into a limited liability company, so long as it satisfies the requirements of this code.

(5) (a) An industrial bank organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the bank and the conduct of its business as may be agreed upon by the members and which provisions are consistent with this code and the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S.

(b) A copy of the written operating agreement shall be filed with the banking board prior to the granting of a charter to the industrial bank, and any amendments to the operating agreement shall be filed with and approved by the banking board prior to adoption.

(c) The banking board may promulgate rules establishing additional requirements relating to operating agreements to implement the provisions of this section.

(6) All distributions made by an industrial bank organized as a limited liability company to its members shall be subject to the requirements applicable to dividends issued by an industrial bank organized as a corporation under this code and the rules of the banking board.

(7) For purposes of implementing this section, the following definition constructions shall apply:

(a) Where this code refers to “articles of incorporation”, that term shall be construed to apply to a limited liability company’s articles of organization, as that term is defined in section 7-80-102 (1), C.R.S.;

(b) Where this code refers to “bylaws”, that term shall be construed to apply to a limited liability company’s operating agreement, as that term is defined in section 7-80-102 (11), C.R.S.;

(c) Where this code refers to “common stock” or “shares” of an industrial bank, such terms shall be construed to apply to a limited liability company’s membership interests;

(d) Where this code refers to a “corporation”, such term shall be construed to include a limited liability company organized under the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S., which limited liability company conforms to this section and the requirements established by the banking board pursuant to section 11-102-104 (5.5);

(e) Where this code refers to a “director” or a “board of directors” of an industrial bank, such terms shall be construed to apply to a manager or the managers of a limited liability company;

(f) Where this code refers to an “incorporator”, such term shall be construed to apply to the organizers of a limited liability company;

(g) Where this code refers to a “shareholder” or a “stockholder” of an industrial bank, such terms shall be construed to apply to a member of a limited liability company.

**Source:** L. 2003: Entire section added, p. 1747, § 4, effective July 1.

**Editor’s note:** Section 11-22-101.3 as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated as § 11-108-205.



## PART 3

## CHARTERS

**11-108-301. Incorporation.** Three or more persons desiring to form a bank, as permitted in this article, may incorporate such bank, and said bank may be chartered by the banking board to engage in the business of a bank upon compliance with the provisions of this article.

**Source: L. 2003:** Entire article added with relocations, p. 1142, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-101.2 as it existed prior to 2003.

**11-108-302. Charter - application - fee - issuance procedure - change in location.**

(1) The incorporators of a proposed industrial bank shall submit to the banking board an application for an industrial bank charter and in support thereof shall submit the following:

(a) An application for a charter in such form as may be prescribed by the banking board by rule, including the following: The name, address, and business affiliation of each director and proposed officer and the name and address of any and all other industrial banks with which each director and proposed officer may be affiliated as a director, officer, or stockholder; the name, address, and business affiliation of each subscriber to stock and the amount of stock subscribed for; the address at which it is proposed the industrial bank will maintain its place of business or, if such address is not known, the area within a radius of one-half mile in which the bank is to be located; a designation of the primary service area it proposes to serve; and such other information as the banking board may reasonably require to enable it to determine whether such charter should be issued;

(b) Proposed articles of incorporation, containing: The name of the proposed industrial bank; the city or county in which it is to be located; the amount of capital; the number and par value of the shares authorized; the number of directors; a statement whether cumulative voting will be permitted for directors; preemptive rights, if any, of stockholders; its term of existence; and such other proper provisions as may be approved by the banking board to govern the affairs and business of the proposed industrial bank, including such provisions required by law for the incorporation of ordinary corporations. The name of the industrial bank need not comply with the requirements of part 6 of article 90 of title 7, C.R.S. Only one class of par value stock of not less than ten dollars per share shall be authorized, but the foregoing shall not affect industrial banks chartered prior to July 1, 1965, having other classes of stock or other par value than recited in this article. The articles of incorporation shall not contain any provisions authorizing such proposed industrial bank to engage in any business or activity except as may be authorized by this article.

(c) Bylaws of the proposed industrial bank;

(d) An application fee established by the banking board pursuant to section 11-102-103 (12). The fee may be refunded to the incorporators by the banking board if the application for charter is withdrawn by the incorporators prior to the date set for public hearing. The applicants shall also submit evidence satisfactory to the banking board that the stock, in an amount not less than the minimum required by section 11-108-305, has been fully subscribed and paid in and that the subscribing stockholders have, in addition thereto, deposited an estimated amount to cover organizational expense.

(2) (a) Within sixty days after the submission of an application, the banking board shall determine whether the application is complete or whether deficiencies exist in the application and shall notify the applicant of such finding and shall specify any deficiencies that have been found to exist. In the event that the application is not completed in accordance with this section and the rules of the banking board within ninety days after the submission date, the application shall be deemed withdrawn and the application fee forfeited.

(b) After the application has been properly completed within the required ninety-day period, the hearing required by this section shall be held and a decision rendered by the

banking board on the charter application at least thirty days prior to any hearing on any later filed application for a bank proposing to serve any portion of the same primary service area.

(c) The banking board, upon determining that the application is complete, shall fix a time and place for a hearing upon such application not less than thirty days nor more than ninety days after such determination or not less than thirty days nor more than ninety days after the banking board renders a decision on an earlier filed application to serve a portion of the same primary service area. At least thirty days prior to the hearing, the banking board shall notify the applicants thereof and mail notices of the hearing upon such application to each industrial bank doing business in the primary service area to be served by the applicant and to such other persons and organizations as the banking board may select. If any person or organization objects to the application, such person or organization may file with the banking board a written objection within twenty days after receipt of the notice of hearing. At such hearing, applicants, persons notified by this subsection (2), and other persons interested may appear and offer testimony in support of, or in opposition to, such application, and such testimony shall be transcribed. The banking board may continue the hearing from time to time for the purpose of taking additional testimony.

(d) Notwithstanding any other provision of this section, if the banking board has given notice pursuant to paragraph (c) of this subsection (2) of a hearing on any application for charter filed pursuant to this section and the banking board has received no written protests against such charter application within ten days prior to the hearing, the banking board may grant such charter without a hearing as otherwise required in this section if the applicants for such charter are known to the banking board.

(3) (a) Upon the receipt of the instruments recited in subsection (1) of this section, the banking board shall investigate the facts and the application and, after a hearing, shall grant the charter if it finds that:

(I) Allowing the applicants to engage in such business will serve the public need and advantage in the primary service area in which the business of the applicants is to be conducted; and that the volume of business in the primary service area that the applicants propose to serve, attributable to industrial banking, is such that profitable operation of the industrial bank may reasonably be projected;

(II) The experience, financial responsibility, character, and general fitness of the proposed officers, directors, stockholders, and persons in control of the industrial bank, as defined in section 11-108-101 (1), are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully and within the purposes of this article. In making a determination under the provisions of this subparagraph (II), the banking board shall be governed by the provisions of section 24-5-101, C.R.S.; and

(III) The articles of incorporation and bylaws are in compliance with law and any rules of the banking board and its proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board.

(b) The applicants shall have the burden of proving the matters set forth in paragraph (a) of this subsection (3).

(4) Such charter shall not be issued until: The articles of incorporation, duly approved by the banking board, have been filed by the incorporators with the secretary of state of Colorado and with the banking board; the proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board; and the organization of said industrial bank, including adoption of the bylaws, election of members to the board, and the election of its officers have been duly completed.

(5) The banking board shall grant or deny an application for a charter within thirty days after conclusion of the hearings thereon. Within ten days after the entry of an order denying or granting an application, the banking board shall give written notice thereof and the banking board's reasons therefor to the applicants and to such industrial banks or other persons who appeared at the hearing in opposition to the granting of such application. The banking board shall make execution of its order to grant a charter contingent upon the proposed industrial bank's making a bona fide application for, and receiving membership in, the federal deposit insurance corporation or the federal reserve system.

(6) The proposed incorporators, or any industrial bank, or other persons aggrieved by the order of denial or granting of the application may seek a review thereof in any district



court of Colorado within thirty days after written notice of the issuance of said order. The court may affirm the order of the banking board, or may reverse or modify the same, or direct the banking board to take any action deemed proper if it finds that the banking board abused its discretion or exceeded its jurisdiction. Review by appeal may be prosecuted from the final judgment of the district court as provided by law and the Colorado appellate rules in the same manner as appeals are taken from judgments of the district court in civil actions.

(7) (a) If a bank chartered under the provisions of this article desires to move from the location for which the charter was granted, the bank shall submit to the banking board in such form as the banking board may prescribe an application for change of location. The application for change of location shall include the following: The new address at which the bank proposes to maintain its place of business; a designation of the primary service area it proposes to serve; evidence satisfactory to the banking board that the requirements of section 11-108-305 (1) relating to the proposed new location have been met; and such other information as the banking board may reasonably require to enable it to determine whether the application for change of location should be granted.

(b) If the proposed new location of the bank is over five hundred feet from the location for which the charter was granted, then, within thirty days following the submission of an application for change of location, the bank shall give notice to the public of the proposed new location by publishing, at least twice in a newspaper of general circulation in the primary service area that such bank serves, a notice identifying the present location of the bank and the proposed new location. If the proposed new location of the bank is five hundred feet or less from the location for which the charter was granted, no such public notice shall be required under this paragraph (b), and the banking board shall grant or deny the application for a change of location within sixty days after submission by the applicant.

(c) If the proposed new location of the bank is more than five hundred feet from and within a radius of one-half mile of the location for which the charter was granted, the banking board shall mail notice of such application for change of location within thirty days following submission of the application to each bank doing business in the primary service area to be served by the applicant. If no bank which received notice of the application objects in writing to the banking board within thirty days after mailing of such notice, the banking board may grant or deny the application, without a hearing, based upon the merits of the application, but such application shall be granted only if the provisions of section 11-108-305 (1) relating to the proposed new location have been met. If any bank receiving notice does object in writing and requests a hearing on the application, the banking board shall determine if a hearing is advisable, and, if it finds it advisable the banking board shall mail a notice of such hearing to each bank doing business in the primary service area to be served.

(d) If the proposed new location of the bank is more than one-half mile from the location for which the charter was granted, the banking board shall give notice within thirty days following submission of the application to each bank doing business in the primary service area to be served by the applicant and to such other persons and organizations as the banking board determines. If no bank, person, or organization receiving notice of the application objects in writing to the banking board within thirty days after mailing of such notice, the banking board may grant or deny the application, with or without a hearing, at its discretion, based on the merits of the application, but such application shall be granted only if the provisions of section 11-108-305 (1) relating to the proposed new location have been met. If any bank, person, or organization receiving notice does object in writing and requests a hearing on the application, the banking board shall hold a hearing on the application, and the banking board shall mail a notice of such hearing to all persons and organizations who were mailed notice of application to change location.

(e) Any hearing held under the provisions of this subsection (7) shall be held within ninety days following the date of mailing of the notice of hearing. At such hearing, the applicant, persons, or organizations notified pursuant to this subsection (7), and other persons interested may appear and offer testimony in support of, or in opposition to, the application for change of location, and such testimony shall be transcribed.

(f) The banking board shall grant or deny an application for change of location within ninety days after the conclusion of any hearing held on the application or, if no hearing is held, within ninety days after the receipt of the application.

**Source: L. 2003:** Entire article added with relocations, p. 1142, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-102 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-108-302 is similar to § 11-22-102 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**The paramount purpose of the requirements under this section** is to protect prospective depositors and other creditors from loss in their dealings with such bank. *Goldy v. Gerber*, 151 Colo. 180, 377 P.2d 111 (1962).

**The general assembly vested in the bank commissioner authority to investigate and conduct hearings.** *Goldy v. Gerber*, 151 Colo. 180, 377 P.2d 111 (1962).

**To prevent one from engaging in a lawful industrial banking business, it is necessary that there be proof and findings of failure to comply with this article or that a detriment to the public health, morals, or welfare would follow issuance of the license.** *Goldy v. Gerber*, 151 Colo. 180, 377 P.2d 111 (1962).

**Unrealistic estimate of business volume is not grounds for application denial.** There is nothing in this section precluding one from engaging in the banking business because his estimates of future volume of business and earnings are unrealistic. *Goldy v. Gerber*, 151 Colo. 180, 377 P.2d 111 (1962).

**11-108-303. Amendment - where filed.** In the event of an amendment to the certificate of incorporation of any industrial bank, certificates setting forth such amendment shall be executed in duplicate and filed in the offices of the secretary of state and the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1146, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-103 as it existed prior to 2003.

**11-108-304. Certificate approving amendment.** If the banking board is satisfied that such amendment has been legally made, and that it in no way impairs the financial standing of said industrial bank, it shall issue to the industrial bank a certificate approving the amendment and authorizing the bank to conduct business pursuant thereto, and no such authority of amendment shall be effective until so approved by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1146, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-104 as it existed prior to 2003.

**11-108-305. Capital structure - inadequacy.** (1) The banking board shall establish by rules the capital standards and guidelines, the methods for measuring capital, and the definitions of "capital", "capital adequacy", "capital inadequacy", and other related terms for industrial banks subject to this article, which may differ for specific purposes. In

**The existence of another industrial bank in the area is not grounds for denial.** A finding by the bank commissioner that one industrial bank exists in the support area and that other facilities exist in or near the area affected does not support a determination that granting of a charter to defendant citizens to do business as an industrial bank would be detrimental to the convenience and advantage of the community. *Goldy v. Gerber*, 151 Colo. 180, 377 P.2d 111 (1962).

**Applicant's previous record not grounds for denial.** The applicant was once ordered to stop making loans until a certain complaint was cleared up. This being the only evidence bearing on the applicant's fitness, and the matter having been resolved satisfactorily to the end that the applicant was authorized by the commissioner to resume his money lending operations, the record does not support the finding that the applicants in general or in particular were unfit to engage in the business of industrial banking. *Bloom v. Cohen*, 165 Colo. 126, 437 P.2d 344 (1968).

**Intention to transfer stock ownership need not be disclosed.** There is no requirement in this section that the application disclose what may or may not be a firm future intention to transfer ownership of some or all of the stock to another entity. *Monroe Indus. Bank v. Bloom*, 648 P.2d 686 (Colo. App. 1982).



promulgating such rules, the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102 and relevant federal laws and regulations. Each industrial bank subject to this article shall at all times comply with the capital rules promulgated by the banking board.

(2) The board of directors of an industrial bank may declare dividends from retained earnings and from other components of capital specifically approved by the banking board so long as the declaration is made in compliance with the rules established by the banking board.

(3) If the banking board has reason to believe that the capital of any industrial bank is inadequate under the rules of the banking board, the banking board may ascertain the facts and furnish the bank with a copy of its determination. If the banking board determines an inadequacy of capital based upon such determination, the commissioner, with the approval of the banking board, may direct the industrial bank to levy an assessment in a designated amount upon the holders of record of common stock to remedy an inadequacy of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of common stock, at their addresses, a copy of the order and a copy of this subsection (3). If an assessment is not paid within the time prescribed in the order or such shorter period as the directors decide, but not less than thirty days, the bank may offer the shares of the defaulting stockholders for sale at public auction or private sale at a price that shall not be less than the amount of the assessment and the cost of the sale. Any excess shall be paid to the prior owners. Except under circumstances where section 11-103-203 applies, the method of collection provided in this section shall be the sole method of collecting assessments. If an assessment is not paid within ninety days after the date of the order to levy or at such other date as may be specified in the order, but in no event less than thirty days, the commissioner may, with the approval of the banking board, proceed pursuant to part 6 of this article; however, for good cause shown to the banking board by the affected bank, the banking board may extend the ninety-day limit. If the banking board determines that the capital or reserves of any bank are inadequate, the banking board may order the bank not to make new loans or discounts.

(4) Any industrial bank upon application to and approval by the banking board, may operate one loan production office as defined by the banking board. Notwithstanding the limitations of this subsection (4), an industrial bank is authorized to engage in such deposit and loan activities as are expressly authorized by this article through a communications facility, as defined in section 11-48-103.

**Source:** L. 2003: Entire article added with relocations, p. 1146, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-105 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-108-305 is similar to § 11-22-105 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, relevant cases construing that provision have been included in the annotations to this section.

**Description of circumstances under which banks with common directors and owned by the same holding company are not branch banks.** *Goldy v. Crane*, 167 Colo. 44, 445 P.2d 212 (1968); *Nemirow v. Bloom*, 167 Colo. 42, 445 P.2d 214 (1968).

**11-108-306. Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section 11-102-104 (11). Assessments may be made more frequently than annually at the discretion of the banking board.

(2) For the fiscal year beginning July 1, 1992, and for each fiscal year thereafter, the banking board shall establish its annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division of banking for each such fiscal year.

**Source: L. 2003:** Entire article added with relocations, p. 1148, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-111 as it existed prior to 2003.

#### PART 4

#### RECORDS, REPORTING, AND INFORMATION

**11-108-401. Subject to corporation laws - powers of banking board - examinations by commissioner - reports by industrial banks.** (1) Industrial banks shall be subject to and governed by the laws relating to general business corporations, except where inconsistent with the provisions of this article, but, in addition thereto, the commissioner shall examine the books and records of every industrial bank as often as deemed advisable and to the extent required by the banking board. The cost of the examination shall be borne by the industrial bank at the rate provided for in section 11-108-306.

(2) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of an industrial bank or any electronic data processing centers that serve an industrial bank, without regard to the location of the electronic data processing center; shall make and file in his or her office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the industrial bank that they serve.

(3) (a) The commissioner, if he or she deems it necessary or if required by the banking board, may examine the books and records of the controlling shareholder of an industrial bank and any affiliated entities of the controlling shareholder for the purpose of determining the safety and soundness of the industrial bank. If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine them at the place where they are located. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the commissioner's behalf. If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one hundred dollars for each day any such refusal continues. In lieu of any examination required by this subsection (3), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs thereof shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(b) For purposes of this subsection (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of an industrial bank.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as are set forth in section 11-102-303 for acquiring control of a state bank.

(4) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of an industrial bank shall within ninety days thereafter file a report with the banking board containing: A statement describing any civil or criminal offenses involving fraud, dishonesty, moral turpitude, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or conspiracy to commit any of such offenses, or an offense affecting such person's qualification to serve in such capacity with respect to which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency; such biographical information as the banking board requires; and such other information as the banking board requires pursuant to its rules. If any statement contained in such report subsequently becomes inaccurate or misleading in any way, such person shall file an amended report within thirty days after the date on which the statement



in the report first becomes inaccurate or misleading. Any person who fails to comply with this subsection (4) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(5) If any industrial bank changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the bank, such changes shall be promptly reported to the banking board, and the bank shall provide such information concerning such person as may be requested by the banking board on such forms as the banking board may require, including information about the reasons for termination from any prior employment and whether such person was charged or convicted of any civil or criminal offenses enumerated in subsection (4) of this section. No civil liability shall arise for any industrial bank, its directors, executive officers, employees, or agents, or other persons due to compliance with the requirements of this subsection (5). The purpose of such information is to inform the banking board of the qualifications of such person as they may affect the safety and soundness of the bank. The information shall be treated as confidential under this article. Any industrial bank that fails to comply with this section shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(6) An industrial bank shall not permit other businesses to be carried on at its place of business except as permitted by this article, unless such businesses were carried on at the place of business of the bank prior to July 1, 1965. A bank shall identify other businesses carried on at its place of business by conspicuous signs placed in or upon the exterior of and adjacent to the principal entrance of its place of business.

(7) (a) Industrial banks that are subject to reserve provisions of the "Federal Reserve Act", as amended, shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", as amended, but in addition thereto the banking board may by rule impose reserve requirements that it deems prudent and sound on said industrial banks. The banking board may also impose reserve requirements by rule on industrial banks not subject to reserve provisions of the "Federal Reserve Act", as amended.

(b) In addition to the reserve against deposit liability, a bank shall maintain a reserve against bad debts as required by law and the banking board.

(8) In addition to other powers conferred by this article, the banking board has power to:

(a) Regulate the procedure and practice at hearings;

(b) Implement by order and rule any provision of this article and obtain restraining orders and injunctions to prevent violation of, and enforce compliance with, the provisions of this article and the orders and rules issued thereunder. In the exercise of such power to make orders and rules to implement the provisions of this article, the banking board shall act, consistent with the policies expressed in section 11-101-102, in the interests of promoting and maintaining a sound industrial banking system, the security of deposits and depositors, and the protection of other customers.

(c) Restrict the withdrawal of deposits from any industrial bank or the payment of any certificate of deposit, contract, or agreement when the banking board determines that the capital of such industrial bank is inadequate pursuant to the provisions of section 11-108-501 (1) (a);

(d) Order any person or industrial bank to cease violating a provision of this article, or a lawful rule issued thereunder, or to cease engaging in unsound business practices. A copy of such order shall be mailed to each director of the industrial bank involved.

(e) Require the board of directors of industrial banks to:

(I) (A) Cause an annual audit of the industrial bank to be completed by an accounting firm composed of certified public accountants or a directors' examination by a public accountant or any other independent person or persons as determined by the banking board at least annually but at intervals of not more than fifteen months as may be required by the banking board or its rules. The banking board shall adopt rules regarding the qualifications

of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's rules shall also establish the scope of such director's examinations, which shall include safeguards to ensure that such examinations adequately describe the financial condition of the financial institution. The banking board may require an audit to be completed by an accounting firm composed of certified public accountants under certain circumstances. A report of the audit or directors' examination and any related management letters and documents shall be completed and submitted to the banking board within the time frames, in the form, and containing such information as the banking board may require in its rules. Such report of the audit or directors' examination and any related management letters and documents shall be reviewed by the directors at the next meeting of the board of directors.

(B) If an industrial bank is owned or controlled by a bank holding company, the requirement of sub-subparagraph (A) of this subparagraph (I) may be fulfilled if: As required by the banking board and its rules, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the industrial bank is included in the annual audit or directors' examination of the bank holding company by that firm; a report of the audit or directors' examination for the controlling bank holding company and any related management letters and documents is completed and submitted to the banking board within the time frames, in the form, and containing such information as the banking board may require in its rules; and an annual internal examination of the industrial bank is prepared by the internal examination staff of the controlling bank holding company which shall be submitted to the banking board immediately upon its request.

(II) Cause the financial statements of the industrial bank to be prepared in accordance with generally accepted accounting principles consistently applied, except as the banking board may otherwise provide in order to establish regulatory and competitive parity and pursuant to the policies expressed in section 11-101-102;

(III) File, record, or otherwise make effective any lien or other interests in property;

(IV) Obtain a financial statement from a person with present or prospective liability to the industrial bank to the extent that the industrial bank can do so;

(f) (I) After notice and hearing, suspend any officer or director for fraud, embezzlement, or failure to comply with any provision of this article or any valid order or rule of the banking board.

(II) With respect to any action pursuant to this section, ten days' notice, by certified mail, return receipt requested, and hearing shall be provided to the bank affected in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice of hearing, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(g) Order any industrial bank to cease making loans if the banking board determines that the reserves against savings obligations as required in subsection (7) of this section, are deficient, or are not in compliance with this article, or are otherwise inadequate, or order any industrial bank to cease taking savings obligations if the banking board determines that the capital of such bank are inadequate.

(9) The banking board has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject relating to a duty imposed upon, or a power vested in, the banking board.

(10) Any industrial bank aggrieved and directly affected by an order or rule of the banking board issued under this article may seek a review in the district court of Colorado in and for the county in which the industrial bank is located, within thirty days after receipt of written notice of the issuance of said order or rule. The filing of such a petition for review shall not, of itself, stay enforcement of an order or rule, but the court, upon a finding that irreparable injury would otherwise result, may order a stay upon such terms as it deems proper. The court may affirm the order of the banking board or may direct the banking board to take any action deemed proper.



(11) (a) A bank shall not, without the written consent of the banking board, purchase real estate or any interest therein or make substantial improvements thereon; except that an industrial bank shall not be prohibited from purchasing or otherwise acquiring real estate or any interest therein pursuant to section 11-108-704.

(b) Any consent given by the banking board under the provisions of paragraph (a) of this subsection (11) shall not constitute any determination by the banking board as to the value of any real estate or the improvements thereon.

(12) No industrial bank shall advertise, display, distribute, or broadcast, or cause or permit to be advertised, displayed, distributed, or broadcasted, in any manner whatsoever, false, misleading, or deceptive statements or representations with regard to the charges for, or terms of, loans, or with reference to its savings deposits or certificates of deposit. The banking board has the power to require that all advertisements of any industrial bank be stated fully and clearly and in such manner as the banking board may deem necessary to prevent misunderstanding thereof by prospective borrowers, depositors, or purchasers of certificates of deposit.

(13) The provisions of article 52 of title 12, C.R.S., known as the "Money Order Act", shall not be applicable to industrial banks, nor shall industrial banks be required to comply therewith.

(14) No person who in good faith relies on any order or rule of the banking board shall be subjected to any civil or criminal liability for any act or omission to act, notwithstanding a subsequent decision by a court invalidating any such order or rule.

(15) The banking board, the bank commissioner, and all deputies and employees of the division of banking shall not divulge any information acquired by them in the discharge of their duties except insofar as the same may be rendered necessary by law. The banking board, the commissioner, and their designees may exchange such information with the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the executive director of the department of regulatory agencies, the division of savings and loan, and banking regulatory agencies of other states. In addition, the banking board, the commissioner, and their designees may exchange information as to possible violations of the federal "Employee Retirement Income Security Act of 1974", as amended, with the federal department of labor or the executive director of the department of regulatory agencies. The executive director of the department of regulatory agencies and the state commissioner of savings and loan associations and their deputies shall, before entering upon the discharge of their duties specified in this section, in addition to an oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of such duties, except as may otherwise be required by law. Willful violation of this oath shall be a criminal offense. Notwithstanding any provision of this article to the contrary, the bank commissioner, the deputies, and the members of the banking board may disclose any information in the records of the division of banking or acquired by them within the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system and disclose information that has been specifically authorized by the board of directors of the bank to which such information relates.

(16) Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, that is directly or by inference derogatory to the financial condition of any industrial bank and that results in an extraordinary withdrawal of funds from such bank or that results in impairing public confidence in such bank and any person who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement knowing the statement to be false commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source:** L. 2003: Entire article added with relocations, p. 1148, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-109 as it existed prior to 2003.

**Cross references:** For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.; for the federal "Employee Retirement Income Security Act of 1974", see 29 U.S.C. § 1001 et seq.

## ANNOTATION

**Annotator's note.** Since § 11-108-401 is similar to § 11-22-109 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant

case construing that provision has been included in the annotations to this section.

**Applied** in *Monroe Indus. Bank v. Bloom*, 648 P.2d 686 (Colo. App. 1982).

**11-108-402. Requirements for acquiring control of industrial banks - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Controlling person" means a person who is in control of an industrial bank or would be in control of an industrial bank after a proposed acquisition.

(b) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.

(2) A person shall be deemed to have acquired control of an industrial bank if, as a result of acquisition, such person:

(a) Directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

(b) Controls in any manner the election of a majority of the directors thereof; or

(c) Exercises a controlling influence over the management or policies thereof.

(3) (a) Whenever a person proposes to acquire control of any industrial bank, such person shall first make application to the banking board for approval. Without approval from the banking board pursuant to subsection (4) of this section, a person shall be prohibited from making such an acquisition.

(b) An application required by paragraph (a) of this subsection (3) shall contain the following information to the extent that it is known by the person making the application:

(I) The number of shares involved;

(II) The name of each seller or transferor;

(III) The name of each purchaser or transferee;

(IV) The name of each beneficial owner if the share or shares are registered in another name;

(V) The purchase price;

(VI) Detailed information concerning any loans made in connection with the acquisition;

(VII) Such other information concerning the transaction as may be available to inform the commissioner of the effect of the transaction upon the control of the industrial bank involved;

(VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

(IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

(4) (a) After receipt of an application, the commissioner shall make an investigation, and the banking board shall approve the change of control only after the banking board has determined:

(I) That the person proposing to acquire control is qualified by character, experience, and financial responsibility to control the industrial bank in a legal and proper manner;

(II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

(III) That the person proposing to acquire control has satisfied the requirements of this section and the other provisions of articles 101 to 104, parts 1 to 5 of article 105, and articles 106 and 107 of this title and this article.

(b) The general assembly declares that the acquisition of control of or of any ownership interest in industrial banks by persons owned or controlled by a country with which it has been determined to be against the national interest to trade without export controls for national security purposes by the president of the United States or another appropriate agency of the federal government as directed by the president pursuant to the "Export Administration Act of 1979", 50 U.S.C. Appendix sec. 2401 et seq., the "International



Emergency Economic Powers Act", 50 U.S.C. sec. 1701 et seq., or any rule, order, or decision promulgated in connection therewith is against the public interest. If the application or the commissioner's investigation indicates that any person seeking to have control of or any ownership interest in an industrial bank is owned or controlled by such a country, the banking board may not approve any such change of control.

(5) This section shall not apply to the acquisition of:

(a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting, in whole or in part, a debt contracted in good faith or stock acquired through testate or intestate succession or bona fide gift, if the acquirer advises the banking board of such acquisition within thirty days after the acquisition and provides any information required or requested by the banking board or commissioner;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof; or

(e) Pro rata stock dividends.

(6) If the banking board has not acted upon a completed application within sixty days after receipt thereof, unless extended for an additional thirty days by the banking board, such application shall be considered approved.

(7) Whenever any person proposes to acquire control of any industrial bank and is required by the "Change in Bank Control Act of 1978" (section 7 (j) of the "Federal Deposit Insurance Act", 12 U.S.C. 1817 (j)), as such act may be amended from time to time, to give the appropriate federal banking agency prior written notice of such proposed acquisition, a copy of such notice with supporting information shall be given concurrently to the banking board for information. The banking board may use such information in evaluating applications submitted pursuant to this section and shall submit its recommendations and comments to the appropriate federal regulatory authority in a timely manner.

(8) (a) Except for the acquisitions approved by the banking board prior to July 1, 2003, a company shall not directly or indirectly acquire or retain control of an industrial bank, including through merger, consolidation, subsidiary or affiliate arrangement, or any other type of business combination, unless the company is engaged only in the activities permitted for a financial holding company pursuant to 12 U.S.C. sec. 1843 (k) (1). This subsection (8) shall not be construed to prohibit acquisition or retention of control of an industrial bank by a natural person or the retention of control of an industrial bank by a person who controlled an industrial bank prior to July 1, 2003.

(b) For the purposes of this subsection (8):

(I) "Company" means a company as defined in 12 U.S.C. sec. 1841 (b).

(II) "Financial holding company" means a financial holding company as defined in 12 U.S.C. sec. 1841 (p).

(9) (a) No industrial bank may accept deposits or make loans at a commercial location unless the industrial bank is owned by a financial holding company.

(b) Nothing in this section shall be construed as authorizing any additional powers for an industrial bank or other financial institution.

(c) For the purposes of this subsection (9):

(I) "Commercial location" means a location owned, operated, leased, or otherwise controlled by an entity that derives fifteen percent or more of its annual gross revenues, on a consolidated basis, including all affiliates of the entity, from engaging, on an on-going basis, in activities that are not financial in nature or incidental to a financial activity during at least three of the prior four calendar quarters, as determined by the division of banking.

(II) "Financial holding company" means a financial holding company as defined in 12 U.S.C. sec. 1841 (p).

(d) This subsection (9) shall not apply to an industrial bank that became an insured depository institution prior to October 1, 2003, and that is a subsidiary of an entity that derives less than fifteen percent of its annual gross revenues, on a consolidated basis,

including all affiliates of the entity, from engaging, on an on-going basis, in activities that are not financial in nature or incidental to a financial activity during at least three of the prior four calendar quarters, as determined by the division of banking.

**Source:** **L. 2003:** Entire article added with relocations, p. 1154, § 3, effective July 1; (8) added, p. 1223, § 2, effective July 1. **L. 2007:** (9) added, p. 60, § 2, effective August 3.

**Editor's note:** (1) This section is similar to former § 11-22-109.5 as it existed prior to 2003.

(2) Section 11-22-109.5 (8) as enacted by Senate Bill 03-016 was harmonized with House Bill 03-1257 and relocated to this section as subsection (8).

**Cross references:** For the legislative declaration contained in the 2003 act enacting subsection (8), see section 1 of chapter 157, Session Laws of Colorado 2003. For the legislative declaration contained in the 2007 act enacting subsection (9), see section 1 of chapter 23, Session Laws of Colorado 2007.

**11-108-403. Reports on condition and income to commissioner.** (1) Every industrial bank shall make and file with the commissioner not less than three reports during each calendar year according to the form that may be prescribed by the commissioner, verified by the oath of either the president, the vice-president, the cashier, or the secretary and attested by the signature of three or more of the directors. Each such report shall exhibit in detail, as may be required by the commissioner, the resources and liabilities of the industrial bank at the close of business on the day past to be specified by said commissioner in writing.

(2) Said reports shall be transmitted to the commissioner within thirty days after the request therefor.

(3) The commissioner has power to call for special reports from any particular industrial bank if, in the commissioner's judgment, the same are necessary to a full and complete knowledge of its condition. No such special report, nor any summary thereof, shall be required to be published. The reports required by, and filed pursuant to, this section shall be in lieu of all others required by law from industrial banks. Every industrial bank that fails to comply with this section shall pay to the commissioner a penalty in an amount set by the banking board pursuant to section 11-102-104 (11) for each day's delay. The commissioner, for valid reasons and good cause, may waive such penalty.

**Source:** **L. 2003:** Entire article added with relocations, p. 1156, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-109.6 as it existed prior to 2003.

**11-108-404. Industrial bank converted to state bank.** (1) Any industrial bank organized under the laws of this state may apply to the banking board, in such form and with such exhibits as it shall prescribe, to be converted into a state bank. Proposed amended articles of incorporation shall accompany the application.

(2) Upon receipt of such application and proposed amended articles of incorporation, the banking board shall proceed to process and hear such application and grant or deny a charter in the same manner and upon the same standards as prescribed in section 11-103-304, relating to the granting or denying of a charter.

(3) In the event of a denial of an application for conversion, the applicant has the right of review and appeal in the manner and form provided in section 11-108-302 (6).

(4) Upon a charter being granted, the industrial bank shall file amended articles of incorporation and also certified copies of the resolution passed by the board of directors and stockholders representing not less than two-thirds of the capital stock of such bank authorizing such conversion. The resolutions of the stockholders shall declare that the officers have been authorized and required to file amended articles of incorporation and to take all steps necessary or proper to convert the industrial bank into a state bank. Upon the filing of the amended articles of incorporation, the banking board shall issue a charter to the industrial bank authorizing it to commence business in the same form as is issued to a state bank. The officers, after executing the amended articles of incorporation, have the power to



execute all other papers and perform all other acts as may be required in connection with the conversion of the industrial bank.

(5) Upon the filing of the amended articles of incorporation, such bank and all of its stockholders, officers, and employees have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects as are applicable to state banks originally organized as such under the laws of this state. The shares of stock of any such bank may continue to be for the same amount each as they were before the conversion, and the directors and officers of such bank may continue until others are elected or appointed.

(6) Upon the filing of the amended articles of incorporation, all of the property of the industrial bank, including all of its right, title, and interest therein as to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value then existing, belonging to it or that would inure to it, shall be vested, immediately by act of law and without conveyance or transfer and without any further act or deed, in and be the property of the state bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the industrial bank. The bank converted under this part 4, in every respect, shall be subject to the provisions of the law pertaining to state banks and shall be deemed to have a continuation of the entity and of the identity of the industrial bank, and all the rights, obligations, and relations of the industrial bank to or in respect to any person, creditor, or depositor shall remain unimpaired.

(7) If necessary, the banking board, for a period not to exceed one year after the date of the issuance of the charter to commence business, subject to such condition as it may prescribe, may permit the converted bank to continue and carry, at a value determined by the banking board, such of the assets of the converted bank as do not conform to the legal requirements relative to assets required and held by state banks.

(8) Any industrial bank organized under this article has the power to purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such bank pursuant to the "Federal Reserve Act", and acts amending such act; to become a member of such federal reserve bank and to have and exercise all powers, not in conflict with the laws of this state, that are conferred upon any such member by the "Federal Reserve Act", and acts amending such act. Such industrial bank and its directors, officers, and stockholders shall continue to be subject to all liabilities and duties imposed upon them by any law of the state and to all provisions of this article.

(9) Any industrial bank organized under this article has power to obtain federal deposit insurance or other deposit insurance and to assume and discharge such obligations to the federal deposit insurance corporation or other insurance corporations as may be necessary or required for the purpose of maintaining deposit insurance in such corporations.

**Source:** L. 2003: Entire article added with relocations, p. 1156, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-110 as it existed prior to 2003.

**Cross references:** For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

#### ANNOTATION

**Annotator's note.** Since § 11-108-404 is similar to § 11-22-110 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**Applicability of criteria of § 11-3-110 to approve conversion from an industrial to a state bank.** Banking Bd. v. Turner Indus. Bank, 165 Colo. 147, 437 P.2d 531 (1968).

## PART 5

DIRECTORS, PENALTIES, REMOVAL,  
SUSPENSION, AND ENFORCEMENT

**11-108-501. Unsound business practices.** (1) For the purposes of this article, an unsound business practice includes, but is not limited to, the following:

(a) The conducting of any business by a bank while the capital of any such bank is inadequate under rules of the banking board. The capital of a bank shall be deemed inadequate if the capital is less than the requirements set by the banking board pursuant to the provisions of section 11-108-305.

(b) The violation by a bank of its articles of incorporation, of any provision of this article or any rule promulgated pursuant thereto, or of any other law or rule of this state that may impair the financial soundness of the bank;

(c) The conducting by a bank of its business in an unsafe or unauthorized manner;

(d) The refusal by a bank to submit its books, papers, and affairs for reasonable inspection by any representative of the division of banking;

(e) The refusal by any officer, director, employee, or agent of any bank to be examined under oath regarding the condition of such bank;

(f) The suspension by a bank of the payment of its obligations;

(g) The operation of a bank in a manner that significantly impairs the condition of the bank or otherwise materially affects the interests of its depositors;

(h) The failure to maintain adequate reserves for losses;

(i) The payment of management or other fees to any person, firm, corporation, or other entity for services rendered in an amount not justified by the actual services rendered;

(j) The payment by a bank of dividends if such payment results in an inadequacy of capital as defined in paragraph (a) of this subsection (1). In making such a determination, the adequacy of loss reserves maintained by the bank shall be taken into consideration.

(k) The repayment of any capital notes, debentures, or evidences of indebtedness that have been included as part of the capital of a bank, without the express prior written consent of the banking board;

(l) The extension of credit to any officer, director, or principal shareholder of a bank, or any related interest of that person, unless the extension of credit:

(I) (A) Is made on substantially the same terms including interest rates, maturity, and collateral as those prevailing at the time for comparable transactions by a bank with other persons; or

(B) Is made pursuant to a benefit or compensation program that is widely available to employees of the bank and does not give preference to any insider; and

(II) Does not involve more than the normal risk of repayment or present other unfavorable features.

**Source: L. 2003:** Entire article added with relocations, p. 1158, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115 as it existed prior to 2003.

**11-108-502. Assessment of civil money penalties by banking board.** (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease-and-desist order issued by the banking board pursuant to section 11-108-401 (8) (d); and

(B) Any industrial bank that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such industrial bank who, violates or knowingly permits any person to violate any of the provisions of this article or any rule promulgated pursuant to this article, or engages or participates in any unsafe or unsound



practice in connection with an industrial bank. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but need not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under this section; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement that contains materially false or misleading information.

(II) The banking board may, at its option and upon waiver of the right to a public hearing by a respondent, close to the public any hearing concerning an assessment of a civil money penalty, an order of suspension or removal from office, an order to cease and desist from any unlawful or unsafe and unsound practices, or any other formal enforcement action by the banking board.

(b) For the purposes of this section, a violation shall include but need not be limited to any action, by any person alone or with another person, which causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty shall constitute a final order for purposes of judicial review pursuant to section 24-4-106, C.R.S.

(3) The banking board shall have authority to determine the amount of any civil money penalty assessed against any executive officer, director, employee, agent, or other person participating in the affairs of an industrial bank, except as expressly limited by this article. In determining the amount of the civil money penalty to be assessed, the banking board shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, the nature and extent of any past violations, and such other matters as the banking board may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed remains in violation.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the banking board; except that the banking board may, in its discretion, compromise, modify, or set aside any civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**Source: L. 2003:** Entire article added with relocations, p. 1159, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.1 as it existed prior to 2003.

**11-108-503. No indemnification or insurance against civil money penalties.** Notwithstanding any other provision of law, no industrial bank shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such industrial bank against civil money penalties.

**Source: L. 2003:** Entire article added with relocations, p. 1160, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.2 as it existed prior to 2003.

**11-108-504. Removal of director, officer, or other person.** (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of an industrial bank with a written notice of its intention to remove such person from office whenever the banking board determines:

(a) That any such person has committed any violation of this article, rule, or cease-and-desist order of the banking board, that has become final, or has engaged or participated

in any unsafe or unsound practice in connection with an industrial bank, or has committed or engaged in any act, omission, or practice that constitutes a breach of such person's fiduciary duty to the industrial bank; and

(b) (I) That the industrial bank has suffered or probably will suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or offense; or

(II) That such person has received financial gain by reason of such violation or practice or breach of fiduciary duty or offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one that demonstrates a willful or continuing disregard for the safety or soundness of the trust company.

(2) Whenever the banking board determines that an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of an industrial bank, by conduct or practice with respect to another industrial bank or business institution that results in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for the bank's safety and soundness and, in addition, has evidenced unfitness to continue his or her relationship with the industrial bank, the banking board may serve upon such person a written notice of its intention to remove him or her from office or to prohibit his or her further participation in any manner in the conduct of the affairs of the industrial bank.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit such person's participation in the conduct of the affairs of an industrial bank shall contain a statement of the facts constituting grounds for removal and shall fix a time and place at which a hearing shall be held. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the banking board at the request of such director or executive officer or other person, and for good cause shown. Unless such director, executive officer, or other person appears at the hearing in person or by a duly authorized representative, such person shall be deemed to have consented to the issuance of an order of removal or prohibition as specified in the notice issued pursuant to subsection (1) or (2) of this section. In the event of such consent or, if, upon the record made at any such hearing, the banking board finds that any of the grounds specified in such notice have been established, the banking board may issue such orders of suspension or removal from office as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such industrial bank and the director, executive officer, or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified in the order. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the banking board or a reviewing court.

**Source:** L. 2003: Entire article added with relocations, p. 1160, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.3 as it existed prior to 2003.

**11-108-505. Suspension of director, officer, or other person.** (1) The banking board may suspend an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of an industrial bank who becomes ineligible to hold such person's position, or who after receipt of an order of the banking board to cease and desist violates this article or a lawful rule or order issued thereunder, or who is dishonest, or who is reckless or grossly incompetent in the conduct of business of an industrial bank, or who may be subject to removal under section 11-108-504. It shall be a criminal offense for any such person, after receipt of a suspension order, to perform any duty or exercise any power of any industrial bank until the banking board vacates such suspension order. A suspension order shall specify the grounds thereof. A copy of the order shall be sent to the industrial bank concerned and to each member of its board of directors.

(2) With respect to any action pursuant to this section, ten days' notice, by certified mail, return receipt requested, and hearing shall be provided to the industrial bank affected,



in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice or hearing, but shall promptly afford a subsequent hearing, upon application to rescind the action taken.

**Source: L. 2003:** Entire article added with relocations, p. 1161, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.4 as it existed prior to 2003.

**11-108-506. Informal enforcement authority.** The banking board, or the commissioner if so authorized by the banking board, shall have authority to initiate informal actions to enforce the provisions of this article. In this regard the banking board or the commissioner may, in its or the commissioner's discretion, enter into written agreements such as a memorandum of understanding with, or an informal commitment letter from, or a strongly worded letter of reprimand to any industrial bank or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of the industrial bank.

**Source: L. 2003:** Entire article added with relocations, p. 1162, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-115.5 as it existed prior to 2003.

**11-108-507. Director and officer insurance and fidelity bonds - legislative declaration.** (1) If any director or officer of a bank knowingly engages in any unsafe or unsound business practice or knowingly violates, in conducting the business of the bank, a law or rule or any condition imposed in writing by the banking board or commissioner, every director or officer participating in or knowingly assenting to such violation shall be held liable in such person's individual capacity for all damages that the bank, its shareholders, or any other person shall have sustained in consequence of such violation.

(2) If the banking board deems any officer of any bank to be dishonest, to be engaging in an unsafe or unsound business practice, or to be incompetent, it shall report in writing the facts regarding such officer to the board of directors or owners of said bank, and, if the directors or owners of said bank fail or refuse to take action on such report within ten days, the commissioner, if he or she deems it advisable, may send a copy of such report to the surety on the bonds of said officer.

(3) For the purposes of this section, "officer" means any person or entity that has the power to direct or cause the direction of the management and policies of the bank, other than in the capacity of a director, through the ownership of voting stock, by contract, or otherwise, and regardless of whether such person has an official title, whether such person's title contains a designation of assistant, and whether such person is serving without salary or other compensation.

(4) In the event of liquidation of a bank, the banking board may prosecute an action under this section to collect damages from such director or officer on behalf of such bank in any court of competent jurisdiction.

(5) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in this article, including the provisions of section 11-101-102:

(I) Any insurance policy, form, contract, endorsement, or certificate that provides insurance coverage to directors or officers, or both, of an industrial bank but that does not grant coverage or that excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such industrial bank, whether in its own name or in behalf of any other person or entity; or

(II) Any fidelity bond, financial institution bond, or depository institution bond that provides for termination of such bond upon the taking over of the industrial bank by a receiver or other liquidator or by state or federal officials.

(b) No provision of part 6 of this article shall be construed to contravene or modify the expressed public policy set forth in this subsection (5).

**Source: L. 2003:** Entire article added with relocations, p. 1162, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-116 as it existed prior to 2003.

## PART 6

### LIQUIDATION AND DISSOLUTION

**11-108-601. Voluntary liquidation and dissolution.** (1) With the approval of the banking board, a bank may liquidate and dissolve. The banking board shall grant such approval if it appears that the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock of the bank at a meeting called for that purpose and that the capital of the bank is adequate and such bank has sufficient liquid assets to pay off depositors and creditors immediately.

(2) (a) Upon approval by the banking board, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation, and shall proceed to pay its depositors and creditors and to wind up its affairs.

(b) Within thirty days after the approval, a notice of liquidation shall be sent by mail to each depositor and creditor at the address of such person as shown in the records of the bank. The notice shall be posted conspicuously on the premises of the bank and shall be published in such a manner as the banking board may require. With each notice, the bank shall send a statement of the amount shown in the records of the bank to be the claim of the depositor or creditor. The notice shall require that claims of depositors and creditors, if the amount claimed differs from the amount stated in the notice to be due, be filed with the bank before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(c) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full, and all lawful claims of creditors and depositors shall promptly be paid.

(d) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before all claims of depositors and creditors have been paid or any funds payable to a depositor or creditor and unclaimed have been transmitted to the banking board or before, in the case of any disputed claim, the bank has transmitted to the banking board a sum adequate to meet any liability that may be judicially determined.

(3) Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to the banking board. Such unclaimed funds shall be held by the banking board for six years and, unless sooner claimed by the person entitled thereto, shall be transferred to the treasury of the county in which the bank is located. The county treasurer and the treasurer's successors shall hold such money in trust for a period of six years, unless the money shall be sooner paid out to the beneficial owner thereof. Any money remaining in the fund six years after the money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the beneficial owners therein to recover the same shall be forever barred.

(4) If the banking board finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, it may take possession and complete the liquidation in the manner provided in this article for involuntary liquidations.

(5) The banking board may require reports of the progress of liquidation. If the banking board is satisfied that the liquidation has been properly completed, it shall cancel the charter and enter an order of dissolution.



**Source:** L. 2003: Entire article added with relocations, p. 1163, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-601 as it existed prior to 2003.

**11-108-602. Involuntary liquidation by banking board - reorganization.** (1) Except as otherwise provided in this article, only the banking board may take possession of a bank if it finds, after a hearing before the banking board, that: The bank's capital is inadequate; the bank is committing or has committed an unsound business practice as defined in section 11-108-501; the bank is unable to continue normal operations; or the control of the bank has been assumed by any person or persons convicted of fraud or a felony involving moral turpitude or financial dealings in this state or any other jurisdiction or by any partnership, association, or corporation controlled, directly or indirectly, by any person so convicted, unless the banking board determines that such person has been duly rehabilitated or otherwise that the bank will be honestly and efficiently managed.

(2) (a) The banking board shall take possession of a bank by posting upon the premises a notice reciting that it is assuming possession pursuant to this article and the time, not earlier than the posting of the notice, when such possession shall be deemed to commence. A copy of the notice shall be filed in the district court of the county in which the bank is located. The banking board shall notify the federal reserve bank of the district of its taking possession of any bank that is a member of the federal reserve system and shall notify the federal deposit insurance corporation of its taking possession of any bank that is a member of the federal deposit insurance corporation.

(b) When the banking board has taken possession of a bank, it shall be vested with the full and exclusive power of control, including the power to stop or to limit the payment of its obligations, to employ any necessary assistants, including legal counsel after possession of the bank has been taken, to execute any instrument in the name of the bank, to commence, defend, and conduct in its name any action or proceeding to which it may be a party, to appoint a bank receiver pursuant to section 11-108-612, to terminate its possession by restoring the bank to its board of directors and stockholders upon conditions prescribed by the banking board, and to reopen a closed bank or liquidate the bank in accordance with this article. As soon as practicable after taking possession, the banking board shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

(c) For six months after the posting of the notice of possession and while the banking board's possession continues, there shall be a postponement of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which a review must be taken, or a pleading or other document must be filed by the bank in any pending action or proceeding.

(d) If, in the opinion of the banking board, an emergency exists that may result in serious losses to the depositors, it may take possession of an industrial bank without a prior hearing. Within ten days after the banking board has taken possession, any interested person may file an application with the banking board for an order vacating such possession. The banking board shall grant the application if it finds its action was unauthorized.

(3) (a) For the purposes of the article, a bank shall be deemed to be closed when the banking board has closed the bank for business for the purpose of liquidation. Unless the banking board tenders to the federal deposit insurance corporation the appointment as liquidator under section 11-108-606 and except as otherwise provided in paragraphs (b) and (c) of this subsection (3), the banking board shall mail notice of its intent to liquidate the bank to the directors, stockholders, and depositors at their addresses as shown on the records of the bank, and the banking board shall proceed to liquidate the bank. With each notice to the depositors, the banking board shall send a statement of the amount shown in the records of the bank to be the claim for each depositor. If the amount of a depositor's claim differs from the amount stated in the notice to be due, the depositor's claim must be filed with the banking board before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice. The banking board may appoint a liquidator to conduct the liquidation of the affairs of any bank. The liquidator shall perform all of the duties required of the banking board under this article and shall make

such periodic reports as the banking board shall require. The liquidator may employ such other assistants and legal counsel at such reasonable compensation as the liquidator shall determine to be necessary. All expenses incident to the liquidation shall be paid out of the assets of the bank. If a liquidator is appointed, and is other than the federal deposit insurance corporation or an employee of the division of banking, the liquidator and any assistants shall provide a bond executed by a surety company authorized to do business in this state, running to the people of the state of Colorado, which meets with the approval of the banking board, for the faithful discharge of their duties in connection with such liquidation and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the bank. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof.

(b) Any notice sent to a depositor pursuant to paragraph (a) of this subsection (3) may contain any additional information or forms as deemed appropriate by the banking board. The banking board shall not be required to send a notice to a depositor pursuant to paragraph (a) of this subsection (3) if no address is shown in the records of the bank.

(c) If the amount shown in the records of the bank to be the claim of a depositor is less than ten dollars, no notices shall be required under this part 6. The banking board may satisfy such claim by mailing the full amount of the claim to the address shown in the records of the bank. If no such address is shown in the records of the bank, the unclaimed funds or property shall be held for disposition pursuant to section 11-108-604.

(4) No judgment, lien, or attachment shall be executed upon any asset of the bank while it is in the possession of the banking board. Upon the election of the banking board, in connection with a liquidation:

(a) Any nonconsensual lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the bank during the banking board's possession, or within four months prior to commencement thereof, shall be vacated and voided, except liens created by the banking board while in possession and further excepting liens or security interests obtained by the federal reserve banks;

(b) Any transfer of an asset of the bank made after or in contemplation of its capital inadequacy, with intent to effect or that results in a preference, shall be voided.

(5) With the approval of the court in which notice of possession has been filed, the banking board may borrow money in the name of the bank and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the banking board's possession of a bank and of its liquidation shall be paid from the assets thereof.

**Source:** L. 2003: Entire article added with relocations, p. 1164, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-602 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-108-602 is similar to § 11-21-104 as it existed prior to its 1981 repeal, relevant cases construing that provision have been included in the annotations to this section.

**The bank commissioner has full control in liquidating a bank.** After the bank commissioner takes charge of a bank for the purpose of liquidating its affairs, the hands of the officers of the bank are tied; the bank commissioner is in control. The debts and claims of the bank are not wiped out by the mere fact that the bank com-

missioner takes control. As a public officer he takes them as he finds them, under his powers and for the purposes set forth in the statute. *Allen v. McFerson*, 77 Colo. 186, 235 P. 346 (1925).

**In court the commissioner has authority to testify as to the amount of claims** allowed by him against a bank; his testimony, therefore, of the amount of such claims is competent under this section. *McDonald v. McFerson*, 80 Colo. 4, 249 P. 496 (1926).

**11-108-603. Injunctions - appeals.** (1) Whenever the banking board has taken possession of a bank and the bank deems itself aggrieved thereby, such bank, within ten days after such taking, may apply to the court in which notice of possession has been filed



to enjoin further proceedings. After citing the banking board to show cause why further proceedings should not be enjoined and after a hearing, the court may dismiss the application of the bank or may enjoin the banking board from further liquidation proceedings and direct the banking board to surrender possession of the bank.

(2) An appeal may be taken by the banking board or by the bank from the judgment of the court in the manner provided by law for appeals from judgments of the district court. An appeal from the judgment does not operate as a stay of judgment. If the appeal is taken by the banking board, no bond need be given, but if the appeal is taken by the bank, a bond shall be given as required by the Colorado rules of civil procedure.

**Source:** L. 2003: Entire article added with relocations, p. 1166, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-603 as it existed prior to 2003.

**11-108-604. Liquidation by banking board - procedure.** (1) In liquidating a bank, the banking board may exercise any power thereof and shall have the duty to collect all assets, debts, and claims belonging to the bank. Unless the banking board obtains the approval of the court in which notice of possession has been filed by petition setting forth the material facts and upon such notice to the officers, directors, or stockholders in such form as the court may require, the banking board shall not:

- (a) Sell any asset of the bank having a value in excess of one thousand dollars;
- (b) Compromise or release any claim if the amount to be compromised or released exceeds one thousand dollars;
- (c) Make any payment on any claim, other than a claim upon an obligation incurred by the banking board, before preparing and filing a schedule of its determinations in accordance with this article.

(2) Within six months after the commencement of liquidation, the banking board may, by its election, terminate any executory contract for services or advertising to which the bank is a party or any obligation of the bank as a lessee. A lessor who receives at least sixty days' notice of the banking board's election to terminate the lease shall have no claim for rent, other than rent accrued to the date of termination, nor for damages for such termination.

(3) The right of any agency of the United States insuring savings obligations to be subrogated to the rights of depositors upon payment of their claims shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of national banks.

(4) Except as otherwise provided in subsection (5) of this section, as soon after the commencement of liquidation as is practicable, the banking board shall send notice of the liquidation to each known creditor and bailor of property held by the bank at the address shown in the records of the bank. The notice shall also be published once a week for three successive weeks in a newspaper of general circulation in the city or county in which the bank is located. With each notice, the banking board shall send a statement of the amount shown in the records of the bank to be the claim of the creditor or bailor. The notice shall demand that property held by the bank as bailee be withdrawn by the person entitled thereto and that the claim of creditor, if the amount claimed differs from the amount stated in the notice to be due, be filed with the banking board before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice. The notice may contain any additional information or forms deemed appropriate by the banking board. The banking board shall not be required to send a notice pursuant to this subsection (4) to a creditor or bailor if no address is shown in the records of the bank.

(5) If the amount shown in the records of the bank to be the claim of a creditor or bailor of property held by the bank is less than ten dollars, no notice shall be required under this part 6. The banking board may satisfy such claim by mailing the full amount of the claim to the address shown in the records of the bank. If no address is shown in the records of the bank, the unclaimed funds or property shall be held for disposition pursuant to subsection (11) of this section.

(6) Any unclaimed property held by the bank as bailee and certified inventories thereof shall be held by the banking board for six years unless sooner claimed by the person entitled thereto. After six years the banking board may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred and disposed of in accordance with the provisions of subsection (11) of this section.

(7) Within six months after the last day specified in the notice for the filing of claims, or within such longer period as may be allowed by the court in which notice of possession has been filed, the banking board shall:

- (a) Reject any claim if the banking board determines the invalidity thereof;
- (b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of such claim under this article;
- (c) Prepare a schedule of the banking board's determinations for filing in the court in which notice of possession was filed;

(d) Notify each person whose claim has not been allowed in full and publish once a week for three successive weeks, in a newspaper of general circulation in the city or county in which the bank is located, a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the banking board will file its schedule in court. If there is no newspaper of general circulation in such city or county, then publication shall be in the newspaper of general circulation published nearest thereto.

(8) Within twenty days after the filing of the banking board's schedule, any creditor, depositor, or stockholder may file an objection to any determination made that adversely affects or may adversely affect such objector. Any objections so filed shall be heard and determined by the court upon such notice to the banking board and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing its schedule, the banking board may, from time to time, make partial distribution to the holders of claims that are undisputed or have been allowed by the court if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the banking board shall make final distribution.

(9) (a) The following claims shall have priority in the order specified: Obligations incurred by the banking board; wages and salaries of officers and employees earned during the three-month period preceding the banking board's possession in an amount not exceeding five thousand dollars for any one person; fees and assessments due to the banking board; claims of the federal reserve as a secured creditor to the extent of the value of its collateral; amounts that the federal deposit insurance corporation shall be entitled to receive on account of its subrogation to the claims of depositors; all other claims for savings obligations; claims of secured creditors to the extent of the value of their collateral; and all other claims.

(b) After the payment of all other claims, with interest at the legal rate, the banking board shall pay claims otherwise proper that were not filed within the time prescribed. If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class pro rata.

(10) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(11) Unclaimed funds remaining after final distribution has been made by the banking board shall be retained for six years by the banking board unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the treasury of the county in which the bank is located. The county treasurer and the treasurer's successors shall hold such money in trust for a period of six years, unless the money is sooner paid out to the beneficial owner or owners thereof or a suit is instituted to recover such money or a portion thereof. Any money remaining in the fund six years after the money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners therein to recover the same shall be forever barred.

(12) When the final distribution of the proceeds of liquidation have been made in accordance with this article, the banking board shall file an account with the court in which



notice of possession was filed. Upon approval thereof, the banking board shall be relieved of liability in connection with the liquidation and shall cancel the charter.

**Source: L. 2003:** Entire article added with relocations, p. 1167, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-604 as it existed prior to 2003.

**11-108-605. Sale of bank stock.** After failure of the stockholders of a bank whose capital is inadequate to cure such inadequacy pursuant to section 11-108-305, the banking board, at its discretion and at any time before or after taking possession of the bank, may offer the stock of the bank for sale at public auction or at private sale at a price not less than the amount required to cure the capital inadequacy and to cover the cost of sale. Any excess over this minimum amount plus the expenses of the banking board shall be paid to the prior owners.

**Source: L. 2003:** Entire article added with relocations, p. 1169, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-605 as it existed prior to 2003.

**11-108-606. Federal deposit insurance corporation as liquidator.** (1) The federal deposit insurance corporation, created by section 12B of the "Federal Reserve Act", as amended, or its successor is authorized to act without bond as liquidator of any bank, the deposits of which are to any extent insured by said corporation or its successor and which bank shall have been closed on account of inability to meet the demands of its depositors or for any other lawful cause.

(2) In the event of such closing, the banking board may tender to said corporation or its successor the appointment as liquidator of such bank.

(3) Upon being notified in writing of the acceptance of such an appointment, the commissioner shall forthwith file in the office of the clerk and recorder in the county in which the bank is situated a certificate evidencing the appointment of the federal deposit insurance corporation or its successor. Upon the filing of such certificate, the possession of all the assets, business, and property of such bank of every kind and nature, wheresoever situated, shall be deemed transferred from such bank and the banking board to the federal deposit insurance corporation or its successor. Without the execution of any instruments of conveyance, assignment, transfer, or endorsement, the title to all such assets and property shall be vested in the federal deposit insurance corporation or its successor, and the banking board and the commissioner shall be forever thereafter relieved from all responsibility and liability in respect to the liquidation of such bank.

(4) If the federal deposit insurance corporation or its successor accepts said appointment, it has all the powers and privileges provided by the laws of this state with respect to the liquidation of a bank, its depositors, and other creditors.

**Source: L. 2003:** Entire article added with relocations, p. 1169, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-606 as it existed prior to 2003.

**Cross references:** Section 12B of the "Federal Reserve Act" was withdrawn from the "Federal Reserve Act" and made a separate act, known as the "Federal Deposit Insurance Act", which can be found at 12 U.S.C. § 1811 et seq.

**11-108-607. Assets sold or pledged as security.** (1) With respect to any bank closed on account of inability to meet the demands of its depositors or by action of the banking board or by action of its directors or in the event of its capital inadequacy or suspension, the liquidator of such bank may borrow from the federal deposit insurance corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, but, if said corporation is acting as liquidator, the order of a court of record

of competent jurisdiction shall be first obtained approving such loan. Upon the order of a court of record of competent jurisdiction, all or any part of the assets of such bank may be sold to the federal deposit insurance corporation by the banking board or by the liquidator with the permission of the banking board.

(2) The provisions of this section shall not be construed to limit the power of any bank, the banking board, or the liquidators to pledge or sell assets in accordance with any existing law.

**Source: L. 2003:** Entire article added with relocations, p. 1170, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-607 as it existed prior to 2003.

**11-108-608. Enforcement of directors' liability.** Among its other powers, the federal deposit insurance corporation or its successor, in the performance of its powers and duties as such liquidator, has the right and power, upon the order of a court of record of competent jurisdiction, to enforce the individual liability of the directors of any such bank.

**Source: L. 2003:** Entire article added with relocations, p. 1170, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-608 as it existed prior to 2003.

**11-108-609. Application of deposits.** (1) Deposits of all persons indebted to a bank in the possession of the banking board, whether such indebtedness is due or to become due, shall be applied by the banking board on account of such indebtedness; except that no stockholder shall set off against his or her stockholder's liability any claim he or she may have as a depositor in or creditor of any bank in the possession of the banking board.

(2) The banking board and any bank that may assume the liability for savings obligations of a bank in the possession of the banking board need not honor and shall not be liable for any agreement between the bank in the possession of the banking board and any other party relating to any savings obligation which agreement is not disclosed on the records of the bank. Neither the assuming bank nor any bank to which a savings obligation is transferred shall be required to recognize as the owner of any portion of a savings obligation any claimant whose name or interest is not disclosed on the records of the bank of which the banking board has taken possession.

**Source: L. 2003:** Entire article added with relocations, p. 1170, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-609 as it existed prior to 2003.

## ANNOTATION

**Annotator's note.** Since § 11-108-609 is similar to § 11-21-106 as it existed prior to its 1981 repeal, relevant cases construing that provision have been included in the annotations to this section.

**"Deposit" should be given its common and ordinary meaning.** The term "deposit" is a common word; used in the statute without limiting definition, its common and ordinary meaning is the one which should be given effect in construing the statute. *Isenhart v. Monty*, 161 Colo. 589, 423 P.2d 836 (1967).

**Term includes deposits subject to check and those for which certificate is issued.** "Deposit", according to its commonly accepted and generally understood meaning among bankers and by the public, includes not only deposits

payable on demand and subject to check, but deposits not subject to check, for which certificates, whether interest-bearing or not, may be issued, payable on demand, or on certain notice, or at a fixed future time. *Isenhart v. Monty*, 161 Colo. 589, 423 P.2d 836 (1967).

**Thus, a thrift certificate purchase is a deposit.** By purchase of a "thrift certificate", plaintiff had no intent to make a general loan to the bank. He made a deposit with the bank within the statute. *Isenhart v. Monty*, 161 Colo. 589, 423 P.2d 836 (1967).

**A deposit without special terms becomes part of bank's general assets.** A deposit with a bank, in the absence of terms which make it a special deposit, becomes immediately a part of the general assets of the bank, and the bank



thereby becomes the debtor of the depositor for the amount of the deposit. *Isenhardt v. Monty*, 161 Colo. 589, 423 P.2d 836 (1967).

**A stockholders' statutory liability is not an indebtedness.** The statutory liability is due to

the creditors and the deposit is due from the bank. *McDonald v. McFerson*, 80 Colo. 4, 249 P. 496 (1926).

**11-108-610. Emergency grant of new charter.** (1) In addition to powers regarding liquidation, the banking board, in the interest of protecting the public and the depositors of a bank, may issue a new bank charter to qualified individuals for the same location as the bank in its possession, contingent upon the new bank assuming full liability for such savings obligations of the bank in its possession as may be transferred to such new bank. Under such conditions, a new charter may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this article.

(2) The banking board may sell the right to assume the outstanding savings obligations of a bank in its possession along with such other assets and under such terms and conditions as it deems advisable.

**Source: L. 2003:** Entire article added with relocations, p. 1171, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-610 as it existed prior to 2003.

**11-108-611. Emergency grant of branch facility.** (1) (a) In addition to powers regarding liquidation, the banking board may issue a grant of authority to a financial institution, as defined in section 11-101-401 (36), which has its principal place of business in this state, to operate a branch at the same location as a closed industrial bank.

(b) Under such conditions, the authority to operate the branch facility may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this article.

(2) Notwithstanding any other provision of this section, a branch facility operated pursuant to this section on or before August 1, 1991, may continue to operate in perpetuity as a branch without being subject to any percentage limitation on branches as set forth in section 11-105-602.

**Source: L. 2003:** Entire article added with relocations, p. 1171, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-611 as it existed prior to 2003.

## PART 7

### BANKING PRACTICES

**11-108-701. Saturday closing - notice - effect.** Any industrial bank, by brief notation on its front door, may fully dispense with or restrict to such extent as it may determine the hours within which it will be open for business on all or less than all Saturdays. The fact that a bank remains open for business on all or less than all Saturdays shall not make that day, or any part thereof, a banking day for purposes of section 4-4-104 (a) (3), C.R.S., of the "Uniform Commercial Code". Any plan so adopted by any such organization may be changed by it from time to time in its discretion. Every Saturday on which any such industrial bank, in observance of such notation, is not open for business shall be with respect to the particular organization the equivalent of a legal holiday as specified in section 24-11-101, C.R.S. Any act authorized, required, or permitted to be performed at, by, or with respect to such organization on a Saturday which is for it a holiday may be performed on the next succeeding business day, notwithstanding the provisions of any other law of this state to the contrary, and no liability or loss of right of any kind shall result from such delay. The provisions of this section shall not operate to invalidate or prohibit the doing on any Saturday of any such act by any person or organization referred to in this section.

**Source: L. 2003:** Entire article added with relocations, p. 1172, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-112 as it existed prior to 2003.

**11-108-702. Limitations on secured borrowing.** (1) Unless authorized by the banking board, no bank shall borrow money upon a secured basis by a pledge or assignment of its notes, mortgages, contracts, or other assets unless it shall retain notes, mortgages, contracts, or other assets that are not pledged or assigned in an aggregate amount, without taking into account unearned charges, of not less than the total amount of its savings deposits, certificates of deposit, contracts, or agreements permitted by section 11-108-202 (1) (c). In the event that any industrial bank should create or incur any such secured indebtedness within the limitations as provided by this section, every financial statement or report of such industrial bank published, issued, or distributed shall indicate clearly therein the extent to which its assets are encumbered.

(2) If liquidation of a bank occurs, any secured indebtedness shall be paid from assets remaining after depositors, other prior claims, and the expenses of liquidation have been paid.

(3) The limitations of this section on secured indebtedness shall not apply to a bank borrowing money upon a secured basis from a federal reserve bank.

(4) For the purposes of this section, "borrowing money upon a secured basis" shall include, but not be limited to, the sale, pledge, or assignment of its notes, mortgages, contracts, or other assets whereby the bank remains or may become liable or partially liable for any indebtedness evidenced by such notes, mortgages, contracts, or other assets.

**Source: L. 2003:** Entire article added with relocations, p. 1172, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-113 as it existed prior to 2003.

**11-108-703. Federal deposit insurance corporation membership required.** No industrial bank may accept or hold savings obligations unless its savings obligations are insured by the federal deposit insurance corporation.

**Source: L. 2003:** Entire article added with relocations, p. 1172, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-701 as it existed prior to 2003.

**11-108-704. Acquisition of property to satisfy indebtedness.** (1) An industrial bank may take property of any kind to satisfy, in whole or in part, or to protect indebtedness previously created in good faith by it, and such property shall be held subject to the following limitations:

(a) Real estate may be used in the banking business, subject to the conditions prescribed by this article for property purchased for such use, or may be leased. Real estate may be put in such condition as will reasonably facilitate its sale. Unless used in the banking business, it shall be sold within five years or such longer period as the banking board may allow.

(b) Other property, the acquisition of which is not otherwise authorized by this article, shall be sold within six months or such longer period as the banking board may allow.

(c) The property shall be entered on the books at not more than cost or fair market value, whichever is less. Except as otherwise provided, each bank maintaining property acquired to satisfy indebtedness will obtain an initial written appraisal and subsequent appraisals as to fair market value by a qualified independent appraiser or such other person as the banking board may approve. Such subsequent appraisals shall be obtained pursuant to rules of the state banking board; except that, for purposes of this paragraph (c), an appraisal, as defined in section 12-61-702 (1), C.R.S., by an appraiser certified, licensed, or registered pursuant to section 12-61-708, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (c) at one hundred thousand dollars or less. If such



appraiser or other person approved by the banking board certifies in writing such appraiser's or other person's opinion that the fair market value has not declined, this opinion may be substituted for a subsequent appraisal.

**Source:** L. 2003: Entire article added with relocations, p. 1173, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-22-119 as it existed prior to 2003.

## PART 8

### CRIMINAL OFFENSES AND VIOLATIONS

**11-108-801. Criminal offenses.** (1) It shall be a criminal offense for any officer, director, employee, or agent of any industrial bank to:

(a) Receive, take, or authorize the receipt or taking of any savings obligation with knowledge that such industrial bank is insolvent or after receipt of any notice or order issued by the banking board directing said industrial bank to cease taking savings obligations;

(b) Issue or cause to be issued, or to authorize or direct the issuance of, any certificate of deposit, contract, or agreement under any descriptive name, under the provisions of section 11-108-202 (1) (c), with knowledge that such industrial bank is insolvent or after receipt of any order or notice from the banking board, ordering said industrial bank to cease issuing any such certificate of deposit, contract, or agreement;

(c) Make or issue, or authorize or direct the making or issuing of, any certificate of deposit, contract, or agreement authorized by section 11-108-202 (1) (c) at any place whatsoever other than its banking premises;

(d) With intent to deceive, withhold, or secrete information, fail to record any transaction made by said industrial bank upon the books and records of said industrial banks by the close of the third business day, exclusive of Sundays and holidays, from the consummation or completion of any such transaction;

(e) Make investments of industrial bank funds other than those permitted by this article;

(f) With intent to deceive, make any false or misleading statement or entry in any book, account, report, or statement of the industrial bank, or fail to make an entry in any book, account, report, or statement of the industrial bank affecting its operations, assets, or liabilities;

(g) Cause, authorize, or permit any industrial bank to sell, assign, or transfer any of its assets with knowledge that such industrial bank is insolvent, or in contemplation of insolvency, with the intent of preferring any creditor or to prevent the application of such assets to the payment of its debts;

(h) Receive or accept, or authorize the receipt or acceptance by and on behalf of said industrial bank, of any false, bogus, or fictitious notes or other evidence of indebtedness, knowing the same to be false, bogus, or fictitious.

(2) Any person responsible for any act or omission expressly declared in subsection (1) of this section to be a criminal offense commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) It is a criminal offense for any officer, director, shareholder, or employee of a bank to directly or indirectly embezzle, abstract, or misapply, or cause to be embezzled, abstracted, or misapplied, any of the funds, securities, or other property of, or under the control of, such bank with the intent to deceive, injure, or defraud any person. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is less than five thousand dollars in total, a person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is five thousand dollars or more in total, a person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person found guilty of a criminal offense under this subsection (3) shall be required to make restitution or repayment of any funds, securities, or other property embezzled, abstracted, or misapplied.

**Source: L. 2003:** Entire article added with relocations, p. 1174, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-22-114 as it existed prior to 2003.

**11-108-802. Certain violations.** Any person willfully or knowingly violating any of the provisions of this article for which no other punishment is provided commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**Source: L. 2003:** Entire article added with relocations, p. 1175, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-22-117 as it existed prior to 2003.

**11-108-803. Prosecutions.** Whenever the banking board determines that a violation of the provisions of this article constitutes a criminal offense, it shall notify the district attorney for the district in which the bank involved in the violation is located. The district attorney shall prosecute the party or parties alleged to have committed the violation within sixty days following the date the banking board notifies the district attorney of such violation. Upon failure or refusal of the district attorney to prosecute under this section, it shall be the duty of the attorney general to prosecute such violation.

**Source: L. 2003:** Entire article added with relocations, p. 1175, § 3, effective July 1.

**Editor’s note:** This section is similar to former § 11-22-118 as it existed prior to 2003.

ARTICLE 109

Trust Companies

**Editor’s note:** This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

**Cross references:** For the “Unclaimed Property Act”, see article 13 of title 38.

**Law reviews:** For article, “Applying the Colorado Trust Company Act to CPAs and Lawyers”, see 30 Colo. Law. 59 (May 2001).

PART 1		11-109-205.	Transactions with affiliates.
GENERAL PROVISIONS		11-109-206.	Trust company organized as a limited liability company.
11-109-101.	Definitions.	PART 3	
11-109-102.	Use of words “trust” or “trust company”.	CHARTERS	
11-109-103.	Applicability of powers of banking board and bank commissioner to trust companies.	11-109-301.	Incorporators.
11-109-104.	Powers - banking board - commissioner.	11-109-302.	Application fee.
11-109-105.	No private right of action.	11-109-303.	Assessments.
PART 2		11-109-304.	Capital.
POWERS		11-109-305.	Application for charter.
		11-109-306.	Procedure for granting or denying charter.
		PART 4	
11-109-201.	Powers of trust companies	RECORDS, REPORTING, AND INFORMATION	
11-109-202.	Offices of trust companies.		
11-109-203.	Activities not requiring a charter.		
11-109-204.	Federal deposit insurance required.	11-109-401.	Acquisition of majority control over an existing trust company - definitions.



11-109-402. Reports to the banking board and to the commissioner.

### PART 5

### DIRECTORS

11-109-501. Directors' meetings - duties.

11-109-502. Director and officer insurance and fidelity bonds - legislative declaration.

### PART 6

### OFFENSES, PENALTIES, REMOVAL, SUSPENSION, AND ENFORCEMENT

11-109-601. Penalty for noncompliance with the law.

11-109-602. Assessment of civil money penalties by banking board.

11-109-603. No indemnification or insurance against civil money penalties.

11-109-604. Removal of director, officer, or other person.

11-109-605. Suspension of director, officer, or other person.

11-109-606. Informal enforcement authority.

11-109-607. Receipt of deposits while insolvent.

### PART 7

### LIQUIDATION, DISSOLUTION, AND EMERGENCY CHARTERS

11-109-701. Discontinuance of trust business - voluntary liquidation and dissolution.

11-109-702. Involuntary liquidation.

11-109-703. Emergency grant of new charter.

11-109-704. Liquidation by commissioner - procedure.

### PART 8

### APPEALS

11-109-801. Appeals procedure.

11-109-802. Injunctions - appeals.

### PART 9

### TRUST PRACTICES

11-109-901. Reserves against deposits.

11-109-902. Investments.

11-109-903. Substitution of trust companies.

11-109-904. Laws governing individuals apply.

11-109-905. Separation of fiduciary funds.

11-109-906. Funds awaiting investment or distribution.

11-109-907. Extensions of credit.

### PART 10

### PRIVATE FAMILY TRUST COMPANIES

11-109-1001. Definitions.

11-109-1002. Compliance - prohibited transactions - certification - remedies.

11-109-1003. Exemptions from compliance - applications - investigations.

11-109-1004. Private family trust company names.

11-109-1005. Change of control.

11-109-1006. Revocation of exemption - notice - hearing.

11-109-1007. Conversion to a public trust company.

## PART 1

### GENERAL PROVISIONS

**11-109-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) Accept or execute trusts, including to:

(I) Act as trustee under a written agreement;

(II) Receive money or other property in the capacity as trustee for investment in real or personal property;

(III) Act as trustee and perform the fiduciary duties committed or transferred to the trustee by order of a court of competent jurisdiction;

(IV) Act as personal representative or trustee of the estate of a deceased person; or

(V) Act as trustee for a minor or incapacitated person;

(b) Administer real or tangible personal property in any other fiduciary capacity; or

(c) Act pursuant to an order of a court of competent jurisdiction as personal representative, executor, or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

- (2) "Banking board" shall have the same meaning as defined in section 11-101-401 (7).
- (3) "Commissioner" means the state bank commissioner.
- (4) "Order" means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the banking board of any matter other than the making of rules of general application.
- (5) "Person" means an individual, corporation, partnership, joint venture, unincorporated association, or any other legal or commercial entity.
- (6) "Representative trust office" means an office at which a trust company has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary.
- (7) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract, but may at any time be required by the trust company, to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit, and funds deposited to the credit of, or in which any beneficial interest is held by, a corporation, association, partnership, or other organization operated for profit do not exceed one hundred fifty thousand dollars per depositor at the trust company.
- (8) "Time deposit" means a deposit that the depositor does not have a right to withdraw for a period of seven days or more from the date of deposit. A "time deposit" may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement, or otherwise.
- (9) "Transaction account" means a deposit or account that the depositor or account holder may withdraw by check or by similar means for payment to third parties.
- (10) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service authorized pursuant to section 11-109-201, including acting as a fiduciary.
- (11) "Trust company" means a corporation organized pursuant to and subject to regulation by the provisions of this article.
- (12) "Trust institution" means a trust company, a federal or state chartered bank with trust powers, or a trust company chartered under the laws of another state.
- (13) "Trust office" means an office, other than the principal office, at which a trust company is authorized by the banking board to engage in the trust business and to act as a fiduciary.

**Source:** L. 2003: Entire article added with relocations, p. 1175, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-102 as it existed prior to 2003.

**11-109-102. Use of words "trust" or "trust company".** (1) It is unlawful for any person, firm, association, or corporation to use or advertise the words "trust" or "trust company" in the conduct of its business in such a manner as is likely to cause the public to be confused, deceived, or mistaken that such person, firm, association, or corporation has been authorized to transact business as a regulated financial institution unless such person, firm, association, or corporation is organized under the "Colorado Banking Code", articles 101 to 109 and article 10.5 of this title, article 70 of this title, or the national banking laws and is authorized to use the words "trust" or "trust company" as part of its name.

(2) The provisions of subsection (1) of this section shall not apply to state banks with trust powers, national banking associations located in Colorado that have trust powers, and trust companies incorporated in Colorado.

**Source:** L. 2003: Entire article added with relocations, p. 1177, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-102.3 as it existed prior to 2003.

**11-109-103. Applicability of powers of banking board and bank commissioner to trust companies.** The powers, duties, and functions of the banking board and the com-



missioner contained in article 102 of this title and the declaration of policy contained in section 11-101-102 shall apply to the provisions of this article.

**Source: L. 2003:** Entire article added with relocations, p. 1177, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-102.5 as it existed prior to 2003.

**11-109-104. Powers - banking board - commissioner.** (1) In addition to the other powers conferred on the banking board by this article, the banking board shall have the power to:

(a) Implement by order and rule any provision of this article and to obtain restraining orders and injunctions to prevent violation of and to enforce compliance with the provisions of this article and the orders and rules issued thereunder. In the exercise of the power to make orders and issue rules, the banking board shall act in the interests of maintaining sound trust companies and the security of fiduciary funds.

(b) Regulate the procedure and the practice at hearings;

(c) Order any person or a trust company to cease violating any provision of this article or any rule and to mail a copy of the order to the person or trust company and to each director of the trust company;

(d) Suspend, after notice and hearing, any officer or director for fraud, theft, or failure to comply with the provisions of this article or with any valid order or rule;

(e) Subpoena witnesses, require the production of evidence, administer oaths, and examine any person under oath in connection with any matter relating to the powers and duties of the banking board;

(f) Require that each trust company maintain such insurance and bonds as necessary and appropriate;

(g) Approve amendments to a trust company's articles of incorporation;

(h) Approve or disapprove a change of location;

(i) Approve or disapprove any merger or other corporate reorganization;

(j) Require a trust company holding fiduciary funds pursuant to section 11-109-906 to collateralize such funds as are in excess of federally insured amounts in accordance with the rules adopted by the banking board;

(k) Require that a trust company that is accepting deposits pursuant to section 11-109-201 (1) (d) limit the aggregate amount of such deposits.

(2) If the banking board has reason to believe that the capital of any trust company is inadequate under the rules of the banking board, the banking board may ascertain the facts and furnish the trust company with a copy of its determination. If the banking board finds an inadequacy of capital based upon such determination, the commissioner, with the approval of the banking board, may direct the trust company to levy an assessment in a designated amount upon the holders of record of common stock to remedy the inadequacy of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of common stock, at their addresses, a copy of the order and a copy of this subsection (2). If an assessment is not paid within the time prescribed in the order or such shorter period as the directors decide, but not less than thirty days, the trust company may, within sixty days thereafter as the banking board may prescribe in its order, offer the shares of the defaulting stockholders for sale at public auction or private sale at a price that shall not be less than the amount of the assessment and the cost of the sale. Any excess shall be paid to the prior owners. The method of collection provided in this subsection (2) shall be the sole method of collecting assessments. If an assessment is not paid within ninety days after the date of the order to levy or at such other date as may be specified in the order, but in no event less than thirty days, the commissioner may, with the approval of the banking board, proceed pursuant to section 11-109-702. However, for good cause shown to the banking board by the affected trust company, the banking board may extend the ninety-day limit.

(3) The term "shareholder" shall apply not only to such persons as appear on the books of the trust company as shareholders, but also to every owner of stock, legal or equitable,

although the stock may stand on such books in the name of another person, but not to a person that holds the stock as collateral security for the payment of a debt.

(4) Any trust company shareholder that has transferred such shareholder's shares, caused such transfer to appear on the books of the trust company within sixty days before the capital inadequacy of such trust company, or that has made such transfer with knowledge of such impending capital inadequacy shall be liable to the same extent that the transferee or subsequent transferee fails to meet such liability. This section shall not be construed to affect in any way any recourse that such shareholder might otherwise have against those in whose names such shares appear upon the books of the trust company at the time of such capital inadequacy.

(5) No stockholder of a trust company shall set off against the stockholder's liability any claim such stockholder may have as a depositor in or creditor of any insolvent trust company.

(6) The commissioner shall examine the books and records of every trust company as often as deemed advisable and to the extent required by the banking board; shall make and file a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the trust company examined.

(7) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of a trust company or any electronic data processing centers that serve a trust company, without regard to the location of the electronic data processing center; shall make and file in the commissioner's office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the trust company that they serve.

(8) (a) The commissioner, if he or she deems it necessary or if required by the banking board, may examine the books and records of the controlling shareholder of a trust company and any affiliated entities of the controlling shareholder for the purpose of determining the safety and soundness of the trust company. If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine them at the place where they are located. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the commissioner's behalf. If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one thousand dollars for each day any such refusal continues. In lieu of any examination required by this subsection (8), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs thereof shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(b) For purposes of this subsection (8):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of a trust company.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as is set forth in section 11-102-303 for acquiring control of a state bank.

**Source:** L. 2003: Entire article added with relocations, p. 1177, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-117 as it existed prior to 2003.

**11-109-105. No private right of action.** Except as expressly provided in this article, no person, other than the banking board, shall have the right to bring or maintain any private action, at law or in equity, for a violation of or to enforce this article.



**Source: L. 2003:** Entire article added with relocations, p. 1180, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-125 as it existed prior to 2003.

## PART 2

### POWERS

**11-109-201. Powers of trust companies.** (1) A trust company shall be incorporated under and subject to the general corporation laws of this state not inconsistent with this article. The business activities of a trust company in this state shall be limited to the exercise of the power to:

(a) Act or be appointed by a court to act in like manner as an individual, an executor, a personal representative, a trustee, an administrator, a guardian, a conservator, an assignee, a custodian, a receiver, or a depository or in any other fiduciary capacity for any purposes permitted by law;

(b) Act as a transfer agent, a registrar, an escrow agent, or an attorney-in-fact and to receive, manage, and apply sinking funds;

(c) Maintain and rent safe deposit and safekeeping facilities;

(d) Receive and maintain savings deposits, time deposits, and certificates of deposit, and to pay interest thereon at the rates permitted state banks under section 11-105-102 (3), subject to the restrictions of section 11-109-204;

(e) Exercise the same investment powers as an individual fiduciary under like circumstances;

(f) Accept and execute any fiduciary business permitted by the laws of this state or any other state and the United States and to establish common trust funds as provided by article 24 of this title;

(g) Take oaths and execute affidavits by the oath or affidavit of the president, vice-presidents, secretary, assistant secretary, manager, trust officer, or assistant trust officer;

(h) Act as an investment adviser under any applicable law;

(i) Do and perform any other acts necessary or proper to exercise the powers enumerated in this section.

(2) Except for those powers specifically authorized in subsection (1) of this section and section 11-109-907, a trust company shall not have the power to conduct a banking business, receive and maintain transaction deposit accounts, nor use the word "bank" in its name.

(3) As authorized pursuant to section 10-2-601 (2), C.R.S., a trust company may, pursuant to federal law or under such rules as may be adopted by the banking board or the commissioner of insurance pursuant to section 10-2-601, C.R.S., act as the agent for any insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For such services, a trust company may receive such fees or commissions as may be agreed between the trust company and the insurance company.

**Source: L. 2003:** Entire article added with relocations, p. 1180, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-103 as it existed prior to 2003.

**11-109-202. Offices of trust companies.** (1) (a) Each trust company shall have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the trust company for service of process.

(c) A trust company may change its principal office to any location within this state by filing a written notice with the banking board. The written notice shall contain:

(I) The name of the trust company;

(II) The street address of its principal office before the change;

(III) The street address to which the principal office is to be changed; and

(IV) A copy of the resolution authorizing the change adopted by the board of directors of the trust company.

(d) The change of principal office shall take effect on the thirty-first day after the date the banking board receives the notice pursuant to paragraph (c) of this subsection (1), unless:

(I) The banking board establishes an earlier or later date; or

(II) Prior to such day the banking board notifies the trust company that the trust company shall establish, to the satisfaction of the banking board, that the relocation is consistent with the original determination made under section 11-109-306 for the establishment of a trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

(2) A trust company may act as a fiduciary and engage in a trust business at each trust office as permitted by this article.

(3) A trust company may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this article.

(4) (a) A trust company may establish or acquire and maintain trust offices or representative trust offices anywhere in this state.

(b) (I) A trust company desiring to establish or acquire and maintain an additional office shall file a written notice with the banking board. The written notice shall contain the following:

(A) The name of the trust company;

(B) The location of the proposed additional office; and

(C) Information indicating whether the additional office will be a trust office or a representative trust office.

(II) The trust company shall also furnish a copy of the resolution authorizing the additional office adopted by the board of directors of the trust company and shall pay the filing fee, if any, prescribed by the banking board.

(c) The trust company may commence business at the additional office on the thirty-first day after the date the banking board receives the notice, unless the banking board specifies an earlier or later date.

(d) The thirty-day period of review may be extended by the banking board on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust company may establish the additional office only on prior written approval by the banking board.

(e) The banking board may deny approval of the additional office if the banking board finds that the trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that establishment of the proposed office would be contrary to the public interest.

(5) A trust company chartered by a state other than Colorado may establish and maintain a trust office or representative trust office anywhere in this state if the establishment and operation of such office is authorized expressly by rules promulgated by the banking board for that purpose. The out-of-state trust company must provide to the commissioner notice of its intent to open an office at least sixty days before opening such office for business.

**Source: L. 2003:** Entire article added with relocations, p. 1181, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-103.2 as it existed prior to 2003.

**11-109-203. Activities not requiring a charter.** (1) Notwithstanding any other provision of this article to the contrary, a company does not engage in the trust business, or in any other business in a manner requiring a charter, under this article or in an unauthorized trust activity by:

(a) Acting in the scope of authority as an agent of a trust institution;

(b) Rendering a service customarily performed by an attorney or law firm in a manner approved and authorized by the Colorado supreme court;



(c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the real estate commission pursuant to article 61 of title 12, C.R.S.;

(e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor, or registered representative of an investment advisor, if the activity is regulated by the securities commissioner or the federal securities and exchange commission;

(f) Engaging in the sale and administration of an insurance product as an insurance company or agent licensed by the division of insurance to the extent that the activity is regulated by the division of insurance;

(g) Acting as trustee for a public, private, or independent institution of higher education or a university system, including an institution of higher education's or university system's affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to such institution or system with respect to its educational or research purposes;

(h) Rendering services customarily performed by a certified public accountant in a manner authorized by article 2 of title 12, C.R.S.;

(i) If the company is a trust institution and is not otherwise prohibited from engaging in a trust business in this state:

(I) Marketing or soliciting in this state through the mails, telephone, any electronic means, or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(II) Delivering money or other intangible assets and receiving the money or other intangible assets from a client or other person in this state; or

(III) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

**Source: L. 2003:** Entire article added with relocations, p. 1182, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-103.3 as it existed prior to 2003.

**11-109-204. Federal deposit insurance required.** (1) No trust company may accept or hold savings deposits, time deposits, or certificates of deposit pursuant to section 11-109-201 (1) (d) unless such deposits are insured by the federal deposit insurance corporation or its successor.

(2) Each trust company shall immediately give notice to the banking board when it has applied to the federal deposit insurance corporation or its successor for deposit insurance and, thereafter, shall give bi-monthly reports on the status of its application for deposit insurance to the banking board until final disposition of the application is made.

**Source: L. 2003:** Entire article added with relocations, p. 1183, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-103.5 as it existed prior to 2003.

**11-109-205. Transactions with affiliates.** (1) Unless otherwise prohibited by law, a trust company and its affiliates may engage in any of the transactions described in subsection (2) of this section if such transactions are either:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such trust company or its subsidiary, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) **Transactions covered.** Subsection (1) of this section shall apply to the following:

- (a) A purchase of, or an investment in, securities issued by the affiliate;
- (b) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate;
- (c) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company;
- (d) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;
- (e) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;
- (f) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services for the trust company or for any other person; and
- (g) Any transaction or series of transactions with a third party including those in which an affiliate has a financial interest in the third party or is a participant in such transaction or series of transactions.

(3) (a) A company or shareholder shall be deemed to have control over another company if such company or shareholder:

(I) Directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of the other company; or

(II) Controls in any manner the election of a majority of the directors or trustees of the other company.

(b) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity or if the company owning or controlling such shares is a business trust.

(4) The banking board may promulgate rules to exempt transactions or relationships from the requirements of this section if the banking board finds such exemptions are in the public interest and consistent with the purposes of this section.

(5) As used in this section, unless the context otherwise requires:

(a) (I) "Affiliate" with respect to a trust company means:

(A) Any company that controls the trust company and any other company that is controlled by the company that controls the trust company;

(B) Any company that is controlled, directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the trust company or any company that controls the trust company;

(C) Any company in which a majority of its directors or trustees constitute a majority of the persons holding any such office with the trust company or any company that controls the trust company;

(D) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the trust company or any subsidiary or affiliate of the trust company; and

(E) Any investment company with respect to which a trust company or any affiliate thereof is an investment advisor as defined in 15 U.S.C. sec. 80a-2 (a) (20).

(II) "Affiliate" with respect to a trust company does not include:

(A) Any company that is a subsidiary of a trust company; and

(B) Any company engaged solely in holding the premises of the trust company.

(b) "Company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "trust company" and a "bank".

(c) "Securities" shall have the same meaning as set forth in section 11-51-201 (17).

**Source: L. 2003:** Entire article added with relocations, p. 1183, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-103.7 as it existed prior to 2003.



**11-109-206. Trust company organized as a limited liability company.** (1) Pursuant to section 11-102-104 (5.5) (c), a trust company charter may be issued to a limited liability company that otherwise meets the requirements of this article.

(2) A trust company organized as a limited liability company shall not be required to exist in perpetuity; except that the articles of organization of such a trust company shall provide for a method to extend the existence of the trust company in the event that termination occurs. In addition, the articles of organization of such a trust company shall require that liquidation of the limited liability company conform with the requirements of this code.

(3) Upon approval of the banking board, a trust company organized as a limited liability company may be merged with or converted into another entity regardless of the form of the surviving entity, so long as the surviving entity satisfies the requirements of this code.

(4) Upon approval of the banking board, a trust company organized as a corporation may be merged with or converted into a limited liability company, so long as it satisfies the requirements of this code.

(5) (a) A trust company organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the trust company and the conduct of its business as may be agreed upon by the members and which provisions are consistent with this code and the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S.

(b) A copy of the written operating agreement shall be filed with the banking board prior to the granting of a charter to the trust company, and any amendments to the operating agreement shall be filed with and approved by the banking board prior to adoption.

(c) The banking board may promulgate rules establishing additional requirements relating to operating agreements to implement the provisions of this section.

(6) All distributions made by a trust company organized as a limited liability company to its members shall be subject to the requirements applicable to dividends issued by a trust company organized as a corporation under this code and the rules of the banking board.

(7) For purposes of implementing this section, the following definition constructions shall apply:

(a) Where this code refers to “articles of incorporation”, that term shall be construed to apply to a limited liability company’s articles of organization, as that term is defined in section 7-80-102 (1), C.R.S.;

(b) Where this code refers to “bylaws”, that term shall be construed to apply to a limited liability company’s operating agreement, as that term is defined in section 7-80-102 (11), C.R.S.;

(c) Where this code refers to “common stock” or “shares” of a trust company, such terms shall be construed to apply to a limited liability company’s membership interests;

(d) Where this code refers to a “corporation”, such term shall be construed to include a limited liability company organized under the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S., which limited liability company conforms to this section and the requirements established by the banking board pursuant to section 11-102-104 (5.5);

(e) Where this code refers to a “director” or a “board of directors” of a trust company, such terms shall be construed to apply to a manager or the managers of a limited liability company;

(f) Where this code refers to an “incorporator”, such term shall be construed to apply to the organizers of a limited liability company;

(g) Where this code refers to a “shareholder” or a “stockholder” of a trust company, such terms shall be construed to apply to a member of a limited liability company.

**Source: L. 2003:** Entire section added, p. 1749, § 6, effective July 1.

**Editor’s note:** Section 11-23-102.7 as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated as § 11-109-206.

## PART 3

## CHARTERS

**11-109-301. Incorporators.** Five or more individual incorporators desiring to organize a trust company shall file with the banking board an application for charter on the form prescribed by the banking board, together with all other documents required by section 11-109-305, all of which instruments shall be duly signed by each of the incorporators and sworn to before an officer authorized by the laws of this state to administer oaths.

**Source: L. 2003:** Entire article added with relocations, p. 1185, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-104 as it existed prior to 2003.

**11-109-302. Application fee.** Each application for charter shall be accompanied by an application fee established by the banking board pursuant to section 11-102-104 (11). The fee may be refunded to the incorporators if the application is withdrawn prior to the date set for public hearing.

**Source: L. 2003:** Entire article added with relocations, p. 1185, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-105 as it existed prior to 2003.

**11-109-303. Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section 11-102-104 (11). Assessments may be made more frequently than annually at the discretion of the banking board.

(2) For the fiscal year beginning July 1, 1992, and for each fiscal year thereafter, the banking board shall establish its annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division of banking for each such fiscal year.

**Source: L. 2003:** Entire article added with relocations, p. 1186, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-105.5 as it existed prior to 2003.

**11-109-304. Capital.** (1) The banking board shall establish by rules the capital standards and guidelines, the methods for measuring capital, and the definitions of "capital", "capital adequacy", "capital inadequacy", and other related terms for trust companies subject to this article, which may differ for specific purposes. In promulgating such rules, the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102 and relevant federal laws and regulations.

(2) Each trust company subject to this article shall at all times comply with the capital rules promulgated by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1186, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-106 as it existed prior to 2003.

**11-109-305. Application for charter.** (1) After the capital stock has been fully subscribed, the incorporators shall make application to the banking board for a charter. The incorporators shall submit to the banking board the following:

(a) The proposed articles of incorporation in such form as the banking board, pursuant to rules, shall prescribe and as shall be acceptable to the secretary of state for purposes of filing;



(b) An application for a charter in such form and containing such information as the banking board may require.

(2) If the proposed articles of incorporation or application do not comply with the requirements of this article, and with the requirements of the banking board issued pursuant thereto, the banking board shall, within thirty days after the receipt thereof, return both of the said documents to the incorporators, calling attention to the defects therein.

**Source: L. 2003:** Entire article added with relocations, p. 1186, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-108 as it existed prior to 2003.

**11-109-306. Procedure for granting or denying charter.** (1) Within sixty days following the filing of the completed application for charter, the commissioner shall make or cause to be made a careful investigation to determine that the following requirements have been met:

(a) That the applicant has proceeded in a lawful manner;

(b) That the name is not deceptively similar to that of another trust company or otherwise misleading;

(c) That the persons who will serve as directors or officers, insofar as such persons are known, are qualified by character and experience and that the qualifications and financial status of the incorporators, directors, officers, and persons in control of the trust company, as defined in section 11-109-401, are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board;

(e) That the proposed or amended articles of incorporation and bylaws are appropriate or may be amended to be appropriate.

(2) Within ninety days after the filing of the application, the banking board shall conduct a public hearing to consider the application. At least thirty days prior to such hearing, the banking board shall give written notice thereof to all persons doing a trust business in the community in which the proposed trust company is to be located and to such other persons as it may designate. At such hearing, the applicants shall have the burden of proving that:

(a) The public convenience and advantage will be promoted by the establishment of the proposed trust company;

(b) Conditions in the locality in which the proposed trust company will transact business afford reasonable promise of successful operation;

(c) The trust company is being formed for no other purpose than the legitimate objects contemplated by this article;

(d) The applicants have complied with all of the applicable provisions of this article;

(e) The books and records of the proposed trust company will be maintained in Colorado and a substantial portion of the proposed trust company's operations will be conducted in Colorado.

(3) Notwithstanding any other provision of this section, if the banking board has given notice pursuant to subsection (2) of this section of a hearing on any application for charter filed pursuant to this section and the banking board has received no written protests against such charter application within ten days before the hearing, the banking board may grant such charter without a hearing as otherwise required in this section if the applicants for such charter are known to the banking board.

(4) Within thirty days after the date of the conclusion of the hearing, the banking board shall grant a charter to the applicants if the banking board determines that the requirements of subsections (1) and (2) of this section have been met.

(5) If the proposed trust company fails to open for business within six months after the date of granting the charter, the privilege of transacting business shall terminate. The banking board, for good cause and upon written application filed prior to the expiration of such six-month period, may extend the time within which the trust company may open for business.

(6) Unless otherwise provided by law to the contrary, articles of incorporation, amended articles of incorporation, or amendments to articles of incorporation shall be delivered to the secretary of state for filing in accordance with the general corporate laws of this state.

**Source: L. 2003:** Entire article added with relocations, p. 1187, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-109 as it existed prior to 2003.

#### PART 4

### RECORDS, REPORTING, AND INFORMATION

**11-109-401. Acquisition of majority control over an existing trust company - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Controlling person" means a person who is in control of a trust company or would be in control of a trust company after the proposed acquisition.

(b) A person shall be deemed to have acquired control of a trust company if as a result of acquisition such person:

(I) Directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

(II) Controls in any manner the election of a majority of the directors thereof; or

(III) Exercises a controlling influence over the management or policies thereof.

(2) (a) Whenever a person proposes to acquire control of any trust company, such person shall first make application to the banking board for approval. Without approval from the banking board pursuant to subsection (3) of this section, a person shall be prohibited from making such an acquisition.

(b) An application required by paragraph (a) of this subsection (2) shall contain the following information to the extent that it is known by the person making the application:

(I) The number of shares involved;

(II) The name of each seller or transferor;

(III) The name of each purchaser or transferee;

(IV) The name of each beneficial owner if the share or shares are registered in another name;

(V) The purchase price;

(VI) Detailed information concerning any loans made in connection with the acquisition;

(VII) Such other information concerning the transaction as may be required by the banking board regarding the effect of the transaction upon the control of the trust company involved;

(VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

(IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

(3) (a) After receipt of an application, the banking board shall make an investigation, and the banking board shall approve the change of control only after the banking board has determined:

(I) That the person proposing to acquire control is qualified by character, experience, and financial responsibility to control the trust company in a legal and proper manner;

(II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

(III) That the person proposing to acquire control has satisfied the requirements of this section and the other provisions of this article.

(b) The general assembly declares that the acquisition of control of or of any ownership interest in trust companies by persons owned or controlled by a country with which it has been determined to be against the national interest to trade without export controls for



national security purposes by the president of the United States or another appropriate agency of the federal government as directed by the president pursuant to the "Export Administration Act of 1979", 50 U.S.C. Appendix sec. 2401 et seq., as amended, the "International Emergency Economic Powers Act", 50 U.S.C. sec. 1701 et seq., as amended, or any rule, order, or decision promulgated in connection therewith, is against the public interest. If the application or the banking board's investigation indicates that any person seeking to have control of or any ownership interest in a trust company is owned or controlled by such a country, the banking board may not approve any such change of control.

(4) This section shall not apply to the acquisition of:

(a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting, in whole or in part, a debt contracted in good faith or stock acquired through testate or intestate succession or bona fide gift, if the acquirer advises the banking board of such acquisition within thirty days after the acquisition and provides any information required or requested by the banking board or commissioner;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof; or

(e) Pro rata stock dividends.

(5) If the banking board has not acted upon a completed application within sixty days after receipt thereof, the time may be extended for an additional thirty days by the banking board.

(6) Whenever any person proposes to acquire control of any trust company and is required by the "Change in Bank Control Act of 1978" (section 7 (j) of the "Federal Deposit Insurance Act", 12 U.S.C. 1817 (j)), as amended, to give the appropriate federal banking agency prior written notice of such proposed acquisition, a copy of such notice with supporting information shall be given concurrently to the banking board for information. The banking board may use such information in evaluating applications submitted pursuant to this section and shall submit its recommendation and comments to the appropriate federal regulatory authority in a timely manner.

**Source:** L. 2003: Entire article added with relocations, p. 1188, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-115 as it existed prior to 2003.

**11-109-402. Reports to the banking board and to the commissioner.** (1) The board of directors shall cause the financial statements of the trust company to be prepared in accordance with generally accepted accounting principles consistently applied, except as the banking board may otherwise provide in order to establish regulatory and competitive parity and pursuant to the policies expressed in section 11-101-102.

(2) The board of directors shall cause an annual audit of the trust company to be completed by an accounting firm composed of certified public accountants or a directors' examination by a public accountant or any other independent person or persons as determined by the banking board at least annually but at intervals of not more than fifteen months as may be required by the banking board or its rules. The banking board shall adopt rules regarding the qualifications of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's rules shall also establish the scope of such directors' examinations, which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. The banking board may require an audit to be completed by an accounting firm composed of certified public accountants under certain circumstances. A report of the audit or directors' examination and any related management letters and documents shall be completed and submitted to the banking board within the

time frames, in the form, and containing such information as the banking board may require in its rules. Such report of the audit or directors' examination and any related management letters and documents shall be reviewed by the directors at the next meeting of the board of directors.

(3) If a trust company is owned or controlled by a bank holding company, the requirement of subsection (2) of this section may be fulfilled if:

(a) As required by the banking board and its rules, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the trust company is included in the annual audit or directors' examination of the bank holding company by that firm;

(b) A report of the audit or directors' examination for the controlling bank holding company, and any related management letters and documents, is completed and submitted to the banking board within the time frames, in the form, and containing such information as the banking board may require in its rules; and

(c) An annual internal examination of the trust company is prepared by the internal examination staff of the controlling bank holding company, which shall be submitted to the banking board immediately upon its request.

(4) (a) Every trust company shall make and file with the commissioner not less than three reports during each calendar year according to the form that may be prescribed by him, verified by the oath of either the president, the vice-president, the cashier, or the secretary and attested by the signature of three or more of the directors. Each such report shall exhibit in detail, as may be required by the commissioner, the resources and liabilities of the trust company at the close of business on the date specified by the commissioner.

(b) Such reports shall be transmitted to the commissioner within thirty days after the request therefor.

(c) The commissioner has power to call for special reports from any particular trust company if, in the commissioner's judgment, such reports are necessary to a full and complete knowledge of its condition. No such special report, nor any summary thereof, shall be required to be published. The reports required by, and filed pursuant to, this section shall be in lieu of all others required by law from trust companies. Every trust company that fails to comply with this section shall pay to the commissioner a penalty in an amount set by the banking board pursuant to section 11-102-104 for each day's delay. The commissioner, for valid reasons and good cause, may waive such penalty.

(5) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of a trust company shall within ninety days thereafter file a report with the banking board containing: A statement describing any civil or criminal offenses affecting such person's qualification to serve in such capacity with respect to which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency; such biographical information as the banking board shall require; and such other information as the banking board shall require pursuant to its rules. If any statement contained in such report subsequently becomes inaccurate or misleading in any way, such person shall file an amended report within thirty days after the date on which the statement in the report first becomes inaccurate or misleading. Any person who fails to comply with this subsection (5) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(6) If any trust company changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the trust company, such changes shall be promptly reported to the banking board, and the trust company shall provide such information concerning such person as may be requested by the banking board on such forms as the banking board may require, including information about the reasons for termination from any prior employment and whether such person was charged or convicted of any civil or criminal offenses enumerated in subsection (5) of this section. No civil liability shall arise for any trust company, its directors, executive officers, employees, or agents, or any other persons due to compliance with the requirements of this



subsection (6). The purpose of such information is to inform the banking board of the qualifications of such person as they may affect the safety and soundness of the trust company. The information shall be treated as confidential under this article. Any trust company that fails to comply with this subsection (6) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

**Source: L. 2003:** Entire article added with relocations, p. 1190, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-118 as it existed prior to 2003.

## PART 5

### DIRECTORS

**11-109-501. Directors' meetings - duties.** (1) The board of directors of a trust company shall meet at least quarterly. A special meeting of the board of directors may be called by the banking board. The board of directors shall maintain minutes of each meeting including the record of attendance. A director who fails to attend three consecutive meetings of the board of directors shall cease to be a director unless such absence is satisfactorily explained to the banking board.

(2) The board of directors shall establish the policies and procedures necessary for the proper exercise of fiduciary powers by the trust company. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the trust company's powers as the board of directors may consider proper to assign to any director, officer, employee, or committee as it may designate.

(3) The board of directors of a trust company may declare dividends from retained earnings and from other components of capital specifically approved by the banking board so long as the declaration is made in compliance with the rules established by the banking board.

**Source: L. 2003:** Entire article added with relocations, p. 1192, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-116 as it existed prior to 2003.

**11-109-502. Director and officer insurance and fidelity bonds - legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in this article, including the provisions of section 11-101-102:

(a) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, that provides insurance coverage to directors or officers, or both, of a trust company but that does not grant coverage or that excludes coverage for claims made by any depository insurance organization or other state or federal corporation, organization, entity, or agency acting as receiver, conservator, or liquidator of such trust company, whether in its own name or in behalf of any other person or entity; or

(b) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of any trust company by a receiver or other liquidator or by state or federal officials.

(2) No provision of this article shall be construed to contravene or modify the expressed public policy set forth in this section.

**Source: L. 2003:** Entire article added with relocations, p. 1193, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-117.5 as it existed prior to 2003.

## PART 6

OFFENSES, PENALTIES, REMOVAL,  
SUSPENSION, AND ENFORCEMENT

**11-109-601. Penalty for noncompliance with the law.** It is unlawful for any person to carry on or conduct in this state a trust company business, or to advertise or hold himself or herself out as being engaged in or doing a trust company business, or to use the word "trust" or words "trust company" in connection with a business unless such person has complied with the provisions of this article or other laws of this state specifically authorizing a fiduciary or trust business. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**Source: L. 2003:** Entire article added with relocations, p. 1193, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119 as it existed prior to 2003.

**11-109-602. Assessment of civil money penalties by banking board.** (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease-and-desist order issued by the banking board pursuant to section 11-109-104 (1) (c); and

(B) Any trust company that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such trust company who, violates or knowingly permits any person to violate any of the provisions of this article or any rule promulgated pursuant to this article, or engages or participates in any unsafe or unsound practice in connection with a trust company. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under this section; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement that contains materially false or misleading information.

(II) The banking board may, at its option and upon waiver of the right to a public hearing by a respondent, close to the public any hearing concerning an assessment of a civil money penalty, an order of suspension or removal from office, an order to cease and desist from any unlawful or unsafe and unsound practices, or any other formal enforcement action by the banking board.

(b) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty shall constitute a final order for purposes of judicial review pursuant to section 24-4-106, C.R.S.

(3) The banking board shall have authority to determine the amount of any civil money penalty assessed against any executive officer, director, employee, agent, or other person participating in the affairs of a trust company, except as expressly limited by this article. In determining the amount of the civil money penalty to be assessed, the banking board shall consider the good faith of the person assessed, the gravity of the violation, any previous



violations by the person assessed, the nature and extent of any past violations, and such other matters as the banking board may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed remains in violation.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the banking board; except that the banking board may, in its discretion, compromise, modify, or set aside any civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**Source: L. 2003:** Entire article added with relocations, p. 1193, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.1 as it existed prior to 2003.

**11-109-603. No indemnification or insurance against civil money penalties.** Notwithstanding any other provision of law, no trust company shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such trust company against civil money penalties.

**Source: L. 2003:** Entire article added with relocations, p. 1194, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.2 as it existed prior to 2003.

**11-109-604. Removal of director, officer, or other person.** (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company with a written notice of its intention to remove him or her from office whenever the banking board determines:

(a) That any such person has committed any violation of this article, a rule of the banking board, or a cease-and-desist order of the banking board that has become final; has engaged or participated in any unsafe or unsound practice in connection with a trust company; or has committed or engaged in any act, omission, or practice that constitutes a breach of fiduciary duty to the trust company; and

(b) (I) That the trust company has suffered or probably will suffer substantial financial loss or other damage or that the interests of its customers could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or offense; or

(II) That such person has received financial gain by reason of such violation, practice, breach of fiduciary duty, or offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one that demonstrates a willful or continuing disregard for the safety or soundness of the trust company.

(2) Whenever the banking board determines that an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company, by conduct or practice with respect to another trust company or business institution that results in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for the trust company's safety and soundness, and, in addition, has evidenced unfitness to continue his or her relationship with the trust company, the banking board may serve upon such person a written notice of its intention to remove him or her from office or to prohibit such person's further participation in any manner in the conduct of the affairs of the trust company.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit such person's participation in the conduct of the affairs of a trust company shall contain a statement of the facts constituting grounds for removal and shall fix a time and place at which a hearing shall be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the banking board at the request of such

director or executive officer or other person, and for good cause shown. Unless such director, executive officer, or other person appears at the hearing in person or by a duly authorized representative, he or she shall be deemed to have consented to the issuance of an order of removal or prohibition as specified in the notice issued pursuant to subsection (1) or (2) of this section. In the event of such consent or, if, upon the record made at any such hearing, the banking board finds that any of the grounds specified in such notice have been established, the banking board may issue such orders of suspension or removal from office as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such trust company and the director, executive officer, or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the banking board or a reviewing court.

**Source: L. 2003:** Entire article added with relocations, p. 1194, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.3 as it existed prior to 2003.

**11-109-605. Suspension of director, officer, or other person.** (1) The banking board may suspend an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company who becomes ineligible to hold his or her position, or who after receipt of an order of the banking board to cease and desist violates this article or a lawful rule or order issued thereunder, or who is dishonest, or who is reckless or grossly incompetent in the conduct of trust business, or who may be subject to removal under section 11-109-604. It shall be a criminal offense for any such person, after receipt of a suspension order, to perform any duty or exercise any power of any trust company until the banking board vacates such suspension order. A suspension order shall specify the grounds thereof. A copy of the order shall be sent to the trust company concerned and to each member of its board of directors.

(2) Ten days' notice, by certified mail, return receipt requested, and hearing shall be provided to any trust company affected by an action of the banking board in advance of any action taken by the banking board pursuant to this section. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice or hearing, but shall promptly afford a subsequent hearing, upon application to rescind the action taken.

**Source: L. 2003:** Entire article added with relocations, p. 1196, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.4 as it existed prior to 2003.

**11-109-606. Informal enforcement authority.** The banking board, or the commissioner if so authorized by the banking board, shall have authority to initiate informal actions to enforce the provisions of this article. In this regard the banking board or the commissioner may, in its or the commissioner's discretion, enter into written agreements such as a memorandum of understanding with, or an informal commitment letter from, or a strongly worded letter of reprimand to any trust company or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of the trust company.

**Source: L. 2003:** Entire article added with relocations, p. 1196, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.5 as it existed prior to 2003.

**11-109-607. Receipt of deposits while insolvent.** It is a criminal offense if a trust company receives any deposit while insolvent, or an officer, director, or employee knows or, in the proper performance of his or her duty should know, of such insolvency and



receives or authorizes the receipt of such deposit, and if such trust company or person has knowingly concealed or misstated material facts regarding the insolvency of the trust company from or to the banking board, commissioner, or division of banking.

**Source: L. 2003:** Entire article added with relocations, p. 1196, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-119.6 as it existed prior to 2003.

## PART 7

### LIQUIDATION, DISSOLUTION, AND EMERGENCY CHARTERS

**11-109-701. Discontinuance of trust business - voluntary liquidation and dissolution.** (1) A trust company may discontinue its trust business upon furnishing to the banking board satisfactory evidence of its release and discharge from all obligations and trusts that it has undertaken or that have been imposed by law. Thereupon, the banking board shall cancel the charter, and such trust company shall not be permitted to use the word "trust" in its name or in connection with its business.

(2) (a) With the approval of the banking board, a trust company may liquidate and dissolve. The banking board shall grant such approval if it appears that the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock of the trust company at a meeting called for that purpose and that the trust company is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

(b) (I) Upon approval by the banking board, the trust company shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation, and shall proceed to pay its depositors and creditors and to wind up its affairs.

(II) Within thirty days after the approval, a notice of liquidation shall be sent by mail to each depositor and creditor, at the address of such person as shown in the records of the trust company. The notice shall be posted conspicuously on the premises of the trust company and shall be published in such a manner as the banking board may require. With each notice, the trust company shall send a statement of the amount shown in the records of the trust company to be the claim of the depositor or creditor. The notice shall require that claims of depositors and creditors, if the amount claimed differs from the amount stated in the notice to be due, be filed with the trust company before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(III) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full, and all lawful claims of creditors and depositors shall promptly be paid.

(IV) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before all claims of depositors and creditors have been paid or any funds payable to a depositor or creditor and unclaimed have been transmitted to the banking board, or, in the case of any disputed claim, the trust company has transmitted to the banking board a sum adequate to meet any liability that may be judicially determined.

(c) Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to the banking board. Such unclaimed funds shall be held by the banking board for six years and, unless sooner claimed by the person entitled thereto, shall be transferred to the treasury of the county in which the trust company is located. The county treasurer and his successors shall hold such money in trust for a period of six years, unless the money is sooner paid out to the beneficial owner. Any money remaining in the fund six years after such money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the beneficial owners therein to recover such money shall be forever barred.

(d) If the banking board finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, the banking

board may take possession and complete the liquidation in the manner provided in this article for involuntary liquidations.

(e) The banking board may require reports of the progress of liquidation. If the banking board is satisfied that the liquidation has been properly completed, it shall cancel the charter and enter an order of dissolution.

**Source: L. 2003:** Entire article added with relocations, p. 1196, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-121 as it existed prior to 2003.

**11-109-702. Involuntary liquidation.** (1) Except as otherwise provided in this article, only the banking board may take possession of a trust company if, after a hearing before the banking board, it finds: The trust company's capital is inadequate; the trust company's business is being conducted in an unlawful or unsound manner; the trust company is unable to continue normal operations; or the control of the trust company has been assumed by any person or persons convicted of fraud or a felony involving moral turpitude or financial dealings in this state or any other jurisdiction, or by any partnership, association, or corporation controlled, directly or indirectly, by any person so convicted, unless the banking board determines that such person has been duly rehabilitated or otherwise that the trust company will be honestly and efficiently managed.

(2) (a) The banking board shall take possession of a trust company by posting upon the premises a notice reciting that it is assuming possession pursuant to this article and the time, not earlier than the posting of the notice, when its possession shall be deemed to commence. A copy of the notice shall be filed in the district court of the county in which the trust company is located. The commissioner shall notify the federal deposit insurance corporation of taking possession of any trust company that is a member of such corporation.

(b) When the banking board has taken possession of a trust company, the commissioner shall be vested with the full and exclusive power of control, including the power to stop or to limit the payment of its obligations; to employ any necessary assistants, including legal counsel after possession of the trust company has been taken; to execute any instrument in the name of the trust company; to commence, defend, and conduct in its name any action or proceeding to which it may be a party; to terminate his or her possession by restoring the trust company to its board of directors and stockholders upon conditions prescribed by the banking board; and to reopen a closed trust company or liquidate the trust company in accordance with this article. As soon as practicable after the banking board takes possession, the commissioner shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

(c) For six months after the posting of the notice of possession and while the banking board's possession continues, there shall be a postponement of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the trust company, or upon which a review must be taken or a pleading or other document must be filed by the trust company in any pending action or proceeding.

(d) If, in the opinion of the banking board, an emergency exists that may result in serious losses to the customers, it may take possession of a trust company without a prior hearing. Within ten days after the banking board has taken possession, any interested person may file an application with the banking board for an order vacating such possession. The banking board shall grant the application if it finds its action was unauthorized.

(3) For the purposes of this article, a trust company shall be deemed to be closed when the banking board has closed the trust company for business for the purpose of liquidation. The banking board shall mail notice of its intent to liquidate the trust company to the directors, stockholders, and depositors at their addresses as shown on the records of the trust company, and the commissioner shall proceed to liquidate the trust company. The banking board may appoint a liquidator to conduct the liquidation of the affairs of any trust company. The liquidator shall perform all of the duties required of the commissioner under this article and shall make such periodic reports as the banking board shall require. If the trust company is a member of the federal deposit insurance corporation, the banking board may offer the position of liquidator to the federal deposit insurance corporation, which may decline in



their discretion. The liquidator may employ such other assistants and legal counsel at such reasonable compensation as the liquidator shall determine to be necessary. All expenses incident to the liquidation shall be paid out of the assets of the trust company. The liquidator and any assistants shall provide a bond executed by a surety company authorized to do business in this state, running to the people of the state of Colorado, that meets with the approval of the banking board, for the faithful discharge of their duties in connection with such liquidation and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the trust company. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof.

(4) No judgment, lien, or attachment shall be executed upon any asset of the trust company while it is in the possession of the banking board. Upon the election of the commissioner, in connection with a liquidation:

(a) Any nonconsensual lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the trust company during the banking board's possession, or within four months prior to commencement thereof, shall be vacated and voided, except liens created by the banking board while in possession;

(b) Any transfer of an asset of the trust company made after or in contemplation of its insolvency, with intent to effect or that results in a preference, shall be voided.

(5) With the approval of the court in which notice of possession has been filed, the commissioner may borrow money in the name of the trust company and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the banking board's possession of a trust company and of its liquidation shall be paid from the assets thereof.

**Source: L. 2003:** Entire article added with relocations, p. 1198, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-122 as it existed prior to 2003.

#### ANNOTATION

**Annotator's note.** Since § 11-109-702 is similar to § 11-23-122 as it existed prior to the 2003 recodification of the "Colorado Banking Code", articles 101 to 109 of title 11, a relevant case construing that provision has been included in the annotations to this section.

**The Trust Company Act provides for a broad delegation to the liquidator of the discretionary powers of the bank commissioner.** *Summit Trust Servs., Inc. v. Snyder*, 936 P.2d 623 (Colo. App. 1997).

Division of claimants into two classes, consisting of those whose assets had been commingled with those of out-of-state investors victimized by Ponzi scheme and those whose assets had not, was reasonable under the circumstances and within the liquidator's authority under this section. *Summit Trust Servs., Inc. v. Snyder*, 936 P.2d 623 (Colo. App. 1997).

**11-109-703. Emergency grant of new charter.** In addition to powers regarding liquidation, the banking board may, in the interest of protecting the public and the depositors of a closed trust company with its principal office in this state, issue a new trust company charter to qualified individuals for the same location as the closed trust company, contingent upon the new trust company assuming full liability for such deposits of the closed trust company as may be transferred to it. Under such conditions, a new charter may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this article.

**Source: L. 2003:** Entire article added with relocations, p. 1199, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-122.1 as it existed prior to 2003.

**11-109-704. Liquidation by commissioner - procedure.** (1) In liquidating a trust company, the commissioner may exercise any power of the trust company and shall have

the duty to collect all assets, debts, and claims belonging to the trust company. Unless the commissioner obtains the approval of the court in which notice of possession has been filed by petition setting forth the material facts and upon such notice to the officers, directors, or stockholders in such form as the court may require, the commissioner shall not:

- (a) Sell any asset of the trust company having a value in excess of five hundred dollars;
- (b) Compromise or release any claim if the amount of the claim exceeds five hundred dollars, exclusive of interest;
- (c) Make any payment on any claim, other than a claim upon an obligation incurred by the commissioner, before preparing and filing a schedule of his or her determinations in accordance with this article.

(2) Within six months after the commencement of liquidation, the commissioner may, by election, terminate any executory contract for services or advertising to which the trust company is a party or any obligation of the trust company as a lessee. A lessor who receives at least sixty days' notice of the commissioner's election to terminate the lease shall have no claim for rent, other than rent accrued to the date of termination, nor for damages for such termination.

(3) The right of any agency of the United States insuring savings obligations to be subrogated to the rights of depositors upon payment of their claims shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of trust companies.

(4) As soon after the commencement of liquidation as is practicable, the commissioner shall send notice of the liquidation to each known depositor, creditor, and bailor of property held by the trust company at the address shown in the records of the trust company. The notice shall also be published once a week for three successive weeks, in a newspaper of general circulation in the city or county in which the trust company is located. With each notice, the commissioner shall send a statement of the amount shown in the records of the trust company to be the claim of the depositor, creditor, or bailor. The notice shall demand that property held by the trust company as bailee be withdrawn by the person entitled thereto and the claim of a depositor or creditor, if the amount claimed differs from the amount stated in the notice to be due, be filed with the commissioner before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(5) Any unclaimed property, including the contents of safe deposit boxes, held by the trust company as bailee and certified inventories thereof shall be held by the commissioner for six years unless sooner claimed by the person entitled to such property. After six years the commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred and disposed of in accordance with the provisions of subsection (10) of this section.

(6) Within six months after the last day specified in the notice for the filing of claims, or within such longer period as may be allowed by the court in which notice of possession has been filed, the commissioner shall:

- (a) Reject any claim if the commissioner determines the invalidity thereof;
- (b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of such claim under this article;
- (c) Prepare a schedule of the commissioner's determinations for filing in the court in which notice of possession was filed;
- (d) Notify each person whose claim has not been allowed in full and publish once a week for three successive weeks, in a newspaper of general circulation in the city or county in which the trust company is located, a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the commissioner will file the schedule in court. If there is no newspaper of general circulation in such city or county, then publication shall be in the newspaper of general circulation published nearest thereto.

(7) Within twenty days after the filing of the commissioner's schedule, the federal deposit insurance corporation or any creditor, depositor, or stockholder may file an objection to any determination made that adversely affects or may adversely affect such objector. Any objections so filed shall be heard and determined by the court upon such



notice to the commissioner and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing the schedule, the commissioner may, from time to time, make partial distribution to the holders of claims that are undisputed or have been allowed by the court if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the commissioner shall make final distribution.

(8) (a) The following claims shall have priority in the order specified: Obligations incurred by the commissioner; wages and salaries of officers and employees earned during the three-month period preceding the commissioner's possession in an amount not exceeding five thousand dollars for any one person; fees and assessments due to the commissioner; amounts that the federal deposit insurance corporation are entitled to receive on account of their subrogation to the claims of depositors; all other claims for savings obligations; claims of secured creditors to the extent of the value of their collateral; and all other claims.

(b) After the payment of all other claims, the commissioner shall pay claims otherwise proper that were not filed within the time prescribed. If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class pro rata.

(9) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(10) Unclaimed funds remaining after final distribution has been made by the commissioner shall be retained for six years by the commissioner unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the treasury of the county in which the trust company is located. The county treasurer and his or her successors shall hold such money in trust for a period of six years, unless the money is sooner paid out to the beneficial owner or owners or a suit is instituted to recover such money or a portion thereof. Any money remaining in the fund six years after such money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners of such money to recover the money shall be forever barred.

(11) When the final distribution of the proceeds of liquidation have been made in accordance with this article, the commissioner shall file an account with the court in which notice of possession was filed. Upon approval thereof, the commissioner shall be relieved of liability in connection with the liquidation and shall cancel the charter.

**Source: L. 2003:** Entire article added with relocations, p. 1200, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-124 as it existed prior to 2003.

## PART 8

### APPEALS

**11-109-801. Appeals procedure.** Any trust company aggrieved and directly affected by an order or rule of the banking board, issued under this article, may seek a review in the district court of this state in and for the county in which the trust company is located, within thirty days after receipt of written notice of the issuance of such order or rule. The filing of such a petition for review shall not, of itself, stay enforcement of an order or rule, but the court, upon a finding that irreparable injury would otherwise result, may order a stay upon such terms as it deems proper. The court may affirm the order of the banking board or may direct said banking board to take any action deemed proper. No person shall be subjected to any civil or criminal liability for any act or omission made in good faith reliance upon a then existing order or rule of the banking board, notwithstanding a subsequent decision by a court invalidating the order or rule.

**Source: L. 2003:** Entire article added with relocations, p. 1202, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-120 as it existed prior to 2003.

**11-109-802. Injunctions - appeals.** (1) Whenever the banking board has taken possession of a trust company and the trust company deems itself aggrieved thereby, such trust company, within ten days after such taking, may apply to the court in which notice of possession has been filed to enjoin further proceedings. After citing the banking board to show cause why further proceedings should not be enjoined and after a hearing, the court may dismiss the application of the trust company or may enjoin the banking board from further liquidation proceedings and direct the banking board to surrender possession of the trust company.

(2) An appeal may be taken by the banking board or by the trust company from the judgment of the court in the manner provided by law for appeals from judgments of the district court. An appeal from the judgment does not operate as a stay of judgment. If the appeal is taken by the banking board, no bond need be given, but if the appeal is taken by the trust company, a bond shall be given as required by the Colorado rules of civil procedure.

**Source: L. 2003:** Entire article added with relocations, p. 1202, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-123 as it existed prior to 2003.

## PART 9

### TRUST PRACTICES

**11-109-901. Reserves against deposits.** Trust companies that are subject to reserve provisions of the "Federal Reserve Act" shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", but, in addition thereto, the banking board may by rule impose reserve requirements that it deems prudent and sound on trust companies, including trust companies not subject to reserve provisions of the "Federal Reserve Act". In promulgating these rules, the banking board shall consider all relevant factors, including without limitation, the factors set forth in section 11-101-102.

**Source: L. 2003:** Entire article added with relocations, p. 1203, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-109.5 as it existed prior to 2003.

**Cross references:** For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

**11-109-902. Investments.** (1) In addition to other investments expressly authorized by this article or the rules promulgated by the banking board, a trust company may purchase:

(a) Obligations that satisfy the requirements of this article or the rules promulgated by the banking board for loans for state banks;

(b) Obligations of, or fully guaranteed by, the United States, a state of the United States, or the Dominion of Canada;

(c) Obligations of the international bank for reconstruction and redevelopment;

(d) Farm loan bonds issued by any federal land bank organized pursuant to an act of congress approved July 17, 1916, entitled: "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes." and known as the "Federal Farm Loan Act", and acts amendatory thereto. Such farm loan bonds shall be accepted as security for all public deposits and in all cases where bonds are required by law to be deposited with any department or public official of this state, but this section shall not be so construed as to prohibit such moneys or deposits from being invested in such other securities provided for by law.



(e) General obligations of a territory of the United States, a province of the Dominion of Canada, or a political subdivision or instrumentality of a state or territory of the United States;

(f) Obligations of a corporation chartered by the United States or a state thereof doing business in the United States; or an authority organized under state law, an interstate compact, or by substantially identical legislation adopted by two or more states if any of the foregoing under this paragraph (f) are approved by the banking board for investment;

(g) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment, located in any state in the United States or territories thereof;

(h) Such other obligations as the general assembly has designated or may from time to time designate as legal investments for public funds;

(i) The capital stock of other corporations, including the stock of a corporation regulated under the federal "Investment Company Act of 1940", as amended, 15 U.S.C. section 80a-1 et seq., and the land or lands and building or buildings in which the business of the trust company is carried on, including its trust company offices, other property in the same building to rent as a source of income, and fixtures, and furniture, safe deposit vaults and boxes, and other personal property such as may be appropriate to carry on its business.

(2) A trust company may, to the extent that banks subject to the laws of the federal government are permitted so to do and to the extent permitted by the rules of the banking board, purchase shares of stock in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the "Small Business Investment Act of 1958", as amended, but in no event shall any trust company hold shares in small business investment companies in an amount aggregating more than three percent of the trust company's capital and surplus.

(3) No limitation or prohibition otherwise imposed by any provision of state law relating to trust companies shall prevent a trust company from investing not more than ten percent of the trust company's capital as defined in the rules promulgated by the banking board in a bank service corporation as defined in 12 U.S.C. 1861 to 1865, inclusive, and as amended, subject to the rights, powers, and limitations contained therein, and such investment by trust companies is expressly authorized to the extent permitted by the rules of the banking board.

(4) A trust company may acquire or retain an equity investment in a subsidiary of which the trust company is the majority owner, so long as the subsidiary is engaged in activities that are allowed pursuant to this article.

(5) Notwithstanding any restrictions upon investments in obligations, powers, or activities contained in this article, a trust company may invest in any obligation, exercise such powers, and engage in such activities that such trust company could legally acquire, exercise, and engage in were it operating as a national bank at the time such investment was made, such powers were exercised, or such activities were engaged in, to the extent permitted by the rules promulgated by the banking board.

(6) A trust company may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of any bank or bank holding company that provides services solely to depository institutions and their shareholders, directors, officers, and employees, wherein the ownership of stock of the bank or bank holding company, except for any stock required by law to be owned by directors of the bank or bank holding company, is restricted to banks, trust companies, or bank holding companies. The amount of stock owned by a trust company in any such bank or bank holding company shall not be in excess of five percent of the voting shares of such bank or bank holding company.

(7) (a) A trust company may directly engage in activities that are primarily investments in real estate or may acquire and hold the voting stock of one or more corporations the activities of which are primarily investments in real estate. Such activities may include subdividing and developing real property and building residential housing or commercial improvements on such property and may also include owning, renting, leasing, managing, operating for income, or selling such property. Such property shall be entered on the books

at not more than cost or fair market value, whichever is less. The total of all investments made by a trust company pursuant to the authority of this subsection (7) shall not exceed ten percent of its capital.

(b) Upon finding that such restrictions are necessary according to the criteria set forth in section 11-101-102, the banking board may adopt rules that restrict the total investments of a trust company under this subsection (7) to a percentage less than ten percent of the trust company's capital. Nothing in this subsection (7) shall authorize a trust company to contravene a lawful order of the banking board or commissioner with respect to investments by the trust company in real estate or corporations engaging in real estate activities. A trust company that intends to initiate a program of investments under the authority of this subsection (7) shall give sixty days' advance notice to the division of banking of such intent; except that such notice may be waived in the banking board's discretion where such notice is impracticable or unnecessary. The trust company shall also notify the division within ten days after the commencement of the investment program. If similar notices are required by the trust company's federal supervisory agency, the same form of notice may be used for purposes of notice under this subsection (7).

**Source: L. 2003:** Entire article added with relocations, p. 1203, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-110 as it existed prior to 2003.

**Cross references:** The "Federal Farm Loan Act", referenced in this section, was repealed in 1971 by the "Farm Credit Act of 1971", which also provided that references to the "Farm Loan Act" shall be deemed to refer to the comparable provisions of the "Farm Credit Act of 1971", Pub.L. 92-181, codified at 12 U.S.C. § 2001 et seq.

**11-109-903. Substitution of trust companies.** Trust companies created under this article may participate in the transfer of trust assets in the case of a substitution of one fiduciary for another under the provisions of sections 11-101-401, 11-106-105, and 11-106-106.

**Source: L. 2003:** Entire article added with relocations, p. 1205, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-110.5 as it existed prior to 2003.

**11-109-904. Laws governing individuals apply.** A trust company in the exercise of its fiduciary powers shall be subject to the same duties, liabilities, and penalties as an individual fiduciary acting in like capacity.

**Source: L. 2003:** Entire article added with relocations, p. 1205, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-111 as it existed prior to 2003.

**11-109-905. Separation of fiduciary funds.** A trust company shall keep fiduciary funds and investments separate and apart from its own assets. All investments made as a fiduciary shall be so designated so that fiduciary funds may be clearly identified.

**Source: L. 2003:** Entire article added with relocations, p. 1205, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-112 as it existed prior to 2003.

**11-109-906. Funds awaiting investment or distribution.** Funds held by a trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Funds held in trust by a trust company awaiting investment or distribution



may, unless prohibited by the instrument creating the trust, be deposited in an account with the trust company as provided in section 11-109-201 (1) (d).

**Source: L. 2003:** Entire article added with relocations, p. 1205, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-23-113 as it existed prior to 2003.

**11-109-907. Extensions of credit.** (1) A trust company, including a private family trust company as defined in section 11-109-1001, shall not make any loans or extensions of credit except as provided in subsection (2) of this section.

(2) A trust company, including a private family trust company as defined in section 11-109-1001, may:

(a) Make a loan or extend credit to its officers, directors, and employees if such loan or credit is adequately secured and does not involve more than the normal risk of default or present other unfavorable features. Any loan or extension of credit in excess of twenty-five thousand dollars shall be subject to prior approval by the banking board.

(b) Establish with one or more broker-dealers margin accounts in its name as fiduciary or custodian for the benefit of the owners or beneficiaries of such accounts.

**Source: L. 2003:** Entire article added with relocations, p. 1206, § 3, effective July 1.  
**L. 2008:** Entire section amended, p. 1502, § 3, effective May 28.

**Editor's note:** This section is similar to former § 11-23-114 as it existed prior to 2003.

## PART 10

### PRIVATE FAMILY TRUST COMPANIES

**11-109-1001. Definitions.** As used in this part 10, unless the context otherwise requires:

(1) "Applicant" means a private family trust company or proposed private trust company that is applying for an exemption from one or more provisions of this article pursuant to section 11-109-1003.

(2) "Control" means that:

(a) A person directly or indirectly, or acting through one or more persons, owns, controls, or has power to vote twenty-five percent or more of the voting securities of a private family trust company; or

(b) A person controls in any manner the election of a majority of the directors, managers, or trustees of a private family trust company.

(3) (a) "Family member" means:

(I) Any individual who is related within the fourth degree of affinity or consanguinity to each individual who owns an interest in the private family trust company, referred to in this subsection (3) as the "individual family member";

(II) A sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company or charitable organization that is at least eighty percent owned, directly or indirectly, by one or more individual family members and has no other owners other than employee-owners, as described in subparagraph (III) of this paragraph (a), or that exclusively benefits an individual family member; or

(III) Any individual who is an employee of and owns a minority interest in an entity described in subparagraph (II) of this paragraph (a).

(b) In determining whether an individual is a "family member" for the purposes of this article:

(I) If more than one person controls a private family trust company or establishes a trust or corporation that controls a private family trust company, all individuals who control the private family trust company must be related within the second degree of affinity or consanguinity;

(II) An individual shall be deemed to be related to another individual if he or she is married to, is an ancestor of, or is a descendant of any ancestor of the other individual.

(c) Adopted children and stepchildren shall be treated the same as natural children for the purpose of determining ancestors and descendants.

(4) "Private family trust company" means a trust company that is prohibited from transacting business with the general public, is exclusively owned by one person or by family members, and is authorized to apply to the banking board for an exemption from certain provisions of this article pursuant to section 11-109-1003.

(5) (a) "Transacting business with the general public" means conducting any sales, solicitations, arrangements, agreements, or transactions to provide a trust or other business service, regardless of whether the conduct is performed for a fee, commission, or other type of remuneration, with any person who is not a family member.

(b) Pursuant to section 11-102-104 (18) (a), the banking board has the power to define circumstances that do not constitute transacting business with the general public for the purposes of this part 10.

**Source: L. 2008:** Entire part added, p. 1494, § 1, effective May 28.

**11-109-1002. Compliance - prohibited transactions - certification - remedies.**

(1) Except as otherwise provided in section 11-109-1003, a private family trust company:

- (a) Shall comply with the provisions of this article;
- (b) Shall not transact business with the general public;
- (c) Shall not market or advertise in any way and shall not hold itself out as providing services to any persons other than family members; and
- (d) Shall provide services, directly or indirectly, only to family members.

(2) Pursuant to section 11-102-104 (18) (d) (III), a private family trust company shall annually submit to the banking board a certification confirming that the company is complying with the provisions of this article, except for those provisions for which the private family trust company has received an exemption from the banking board pursuant to section 11-109-1003.

(3) If a private family trust company fails to comply with one or more provisions of this article for which the private family trust company does not possess an exemption pursuant to section 11-109-1003 or any order issued by the banking board consistent with this article, the banking board may:

- (a) Institute any action or remedy prescribed by this article or any applicable rule promulgated by the banking board; or
- (b) Revoke the charter of the private family trust company.

**Source: L. 2008:** Entire part added, p. 1495, § 1, effective May 28.

**11-109-1003. Exemptions from compliance - applications - investigations.** (1) A private family trust company may be exempted from compliance with one or more provisions of this article as specified in rules adopted by the banking board pursuant to section 11-102-104 (18) (c).

(2) An applicant may submit to the banking board an application requesting that the banking board, pursuant to section 11-102-104 (18) (b), grant the applicant a whole or partial exemption from compliance with one or more provisions of this article. The application shall be submitted on the standard application form developed by the banking board pursuant to section 11-102-104 (18) (d) (I) (A) and shall include:

- (a) A nonrefundable application fee in an amount to be determined by the banking board pursuant to section 11-102-104 (18) (d) (I) (B);
- (b) The applicant's financial statements as of the end of the most recent quarter of the calendar year and the most recent calendar or fiscal year end;
- (c) A statement of the reason for which the applicant is requesting the exemption;
- (d) A statement that the applicant:
- (I) Is not currently transacting business with the general public;



- (II) Will not transact business with the general public;
  - (III) Will not market or advertise in any way and will not hold itself out as providing services to any persons other than family members; and
  - (IV) Will provide services, directly or indirectly, only to family members;
  - (e) The current street mailing address and phone number of the physical location in this state at which the applicant will maintain its financial records;
  - (f) A list of the specific provisions of this article for which the applicant is requesting an exemption; and
  - (g) Any other information requested by the banking board.
- (3) Upon receipt of an application submitted by an applicant pursuant to subsection (2) of this section, the banking board may:
- (a) Grant the exemption wholly or in part;
  - (b) At the expense of the applicant, investigate the applicant in connection with the request; or
  - (c) Request that the applicant submit additional information to allow the banking board to make an informed decision.
- (4) Unless an application submitted by an applicant pursuant to subsection (2) of this section presents novel or unusual questions, the banking board shall either approve the application and grant the exemption wholly or in part or set a date for a hearing concerning the application no later than sixty-one days after:
- (a) The banking board receives the application; or
  - (b) In the event that the banking board requests additional information pursuant to paragraph (c) of subsection (3) of this section, the banking board receives the additional information.
- (5) The banking board may grant a whole or partial exemption to an applicant only if the banking board determines that the applicant does not and will not transact business with the general public.
- (6) In granting a whole or partial exemption pursuant to this section, the banking board may, in its discretion, attach any conditions or limitations to the exemption that are consistent with the provisions of this article.

**Source: L. 2008:** Entire part added, p. 1496, § 1, effective May 28.

**11-109-1004. Private family trust company names.** (1) The name of a private family trust company shall not be deceptively similar to the name of another trust company or private family trust company.

(2) The name of a private family trust company shall include the words “private” and “family”.

**Source: L. 2008:** Entire part added, p. 1497, § 1, effective May 28.

**11-109-1005. Change of control.** (1) A person who controls a private family trust company may sell or otherwise transfer control of the company thirty days after providing to the banking board written notice of his or her intent to transfer control of the company. The notice shall be in such form as the banking board may require pursuant to section 11-102-104 (18) (d) (IV).

(2) If a person transfers control of a private family trust company pursuant to subsection (1) of this section to another person to whom he or she is related within the second degree of affinity or consanguinity, any exemptions that have been granted to the private family trust company by the banking board pursuant to section 11-109-1003 shall remain effective.

(3) If a person transfers control of a private family trust company pursuant to subsection (1) of this section to another person to whom he or she is not related within the second degree of affinity or consanguinity, any exemptions that have been granted to the private family trust company by the banking board pursuant to section 11-109-1003 shall be revoked upon the date that the transfer becomes effective. If the person to whom control of

the private family trust company is transferred wishes to retain an exemption that has been granted by the banking board to the company prior to the transfer, he or she must submit an application for the exemption pursuant to section 11-109-1003.

**Source: L. 2008:** Entire part added, p. 1498, § 1, effective May 28.

**11-109-1006. Revocation of exemption - notice - hearing.** (1) The banking board, in accordance with rules promulgated pursuant to section 11-102-104 (18) (d) (II), may revoke an exemption granted to a private family trust company pursuant to section 11-109-1003, which also subjects the private family trust company to additional securities regulations.

(2) (a) If the banking board resolves to revoke an exemption granted to a private family trust company pursuant to subsection (1) of this section, it shall notify the private family trust company in writing of the revocation. The notice shall state with reasonable certainty the reason for the revocation and the effective date of the revocation. The effective date shall be no less than ten days after the date that the notice is mailed or delivered to the private family trust company.

(b) The exemption revocation shall become effective upon the effective date, as specified in paragraph (a) of this subsection (2), unless the private family trust company submits a written request, before the effective date, that the banking board hold a hearing on the matter pursuant to subsection (3) of this section.

(3) (a) If a private family trust company, upon receiving notice of a revocation, timely requests a hearing of the banking board as specified in subsection (2) of this section, the banking board shall conduct a hearing. At the hearing, the banking board shall grant the private family trust company a reasonable opportunity to state the reason or reasons why the exemption should not be revoked. At the conclusion of the hearing, the banking board shall immediately uphold or withdraw the revocation.

(b) If, upon the conclusion of a hearing granted to a private family trust company pursuant to paragraph (a) of this subsection (3), the banking board upholds a revocation of an exemption, the effective date of the upheld revocation shall be ten days after the date of the hearing. The decision of the banking board to uphold a revocation shall be final and not subject to further appeals by the private family trust company or any other party.

**Source: L. 2008:** Entire part added, p. 1498, § 1, effective May 28.

**11-109-1007. Conversion to a public trust company.** (1) Upon satisfaction of the conditions described in subsection (2) of this section, and except as otherwise provided in subsections (3) to (5) of this section, a private family trust company may terminate its status as a private family trust company, convert itself to a public trust company, and begin transacting business with the general public in accordance with the provisions of this article.

(2) A private family trust company that intends to terminate its status as a private family trust company, convert itself to a public trust company, and begin transacting business with the general public shall submit notice of its intent in writing to the banking board in a manner prescribed by rule of the banking board adopted pursuant to section 11-102-104 (18) (d) (V). Except as described in subsections (3) to (5) of this section, the company may begin transacting business with the general public thirty-one days after approval by the banking board.

(3) Upon receipt of a notice of intent submitted by a private family trust company pursuant to subsection (2) of this section, the banking board may:

(a) At the expense of the private family trust company, investigate the private family trust company in connection with the request;

(b) Request that the private family trust company submit additional information to allow the banking board to make an informed decision;

(c) Order the company to refrain from transacting business with the general public as described in subsection (4) of this section; or



(d) Specify a date upon which the company may begin transacting business with the general public as described in subsection (5) of this section.

(4) The banking board shall order a company that has provided a notice of intent pursuant to subsection (2) of this section to refrain from transacting business with the general public if the banking board determines that:

(a) The company lacks adequate financial resources to undertake the proposed conversion without adversely affecting the company's safety or soundness;

(b) The transaction of business with the general public by the company would be contrary to the public interest; or

(c) The company will not be in compliance, when it commences business with the general public, with any provision of this article for which the company has been granted an exemption pursuant to section 11-109-1003.

(5) A private family trust company that submitted a notice of intent and has been ordered by the banking board to refrain from transacting business with the general public pursuant to subsection (4) of this section shall not begin transacting business with the general public until such date as the banking board specifies that the company may begin to transact business with the general public.

**Source: L. 2008:** Entire part added, p. 1499, § 1, effective May 28.











